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Scherverville, IN 46375  
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LAKE COUNTY  
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DECLARATION OF CONDITIONS AND

RESTRICTIONS FOR SCHMIDT FARMS

CITY OF CROWN POINT, LAKE COUNTY, INDIANA



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DECLARATION OF CONDITIONS AND  
RESTRICTIONS FOR SCHMIDT FARMS  
CITY OF CROWN POINT, LAKE COUNTY, INDIANA

THIS DECLARATION, dated this 17<sup>th</sup> day of January, 2005 made by SCHMIDT FARMS DEVELOPMENT, LLC (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property ("Property") described in Exhibit "A" attached hereto and made a part hereof to be known generally as Schmidt Farms; and

WHEREAS, Developer, Schmidt Farms Development, an Indiana Limited Liability Co., desires to create on the property a residential community ("Community") with permanent roadways, with appurtenant parkways, and general parking areas, and to reserve the right to provide recreational facilities and other common areas ("Community Facilities") for the benefit of the Community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities of the Community and for the enhancement, maintenance and use of the Community Facilities; and, to this end desires to subject the property and the respective owners to the covenants, restrictions, terms and conditions hereinafter set forth, each and all of which are for the benefit of the Property; and

WHEREAS, Developer deems it desirable for the preservation of the Community to create an agency to which should be delegated and assigned the powers of maintaining, administering and enforcing various covenants and restrictions and collecting and

disbursing the assessments and charges hereinafter set forth, to be known as the Schmidt Farms Property Owners Association for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that all of the property described in Exhibit "A" shall be held, transferred, sold, conveyed, occupied and dedicated subject to the covenants, conditions, restrictions, easements, undertakings, agreements, changes, liens and rules of Schmidt Farms POA as provided herein and as may be later amended as hereinafter set forth.

## ARTICLE I

### DEFINITIONS

1.01 **Definitions.** The following terms, unless the context requires otherwise, shall have the following meaning when used in this Declaration:

A. "Declaration" shall mean this instrument and shall include such amendments, if any, to this instrument as may from time to time be adopted as permitted by the term hereof.

B. "Declarant" shall mean Schmidt Farms Development, LLC, provided, however, that Declarant may act hereunder by and through its beneficiaries, its successors and assigns and on behalf of all persons seeking to acquire any interest hereof.

C. "Developer" shall mean Schmidt Farms Development, LLC, an Indiana Limited Liability Company, provided, however, that Developer may act hereunder by and through its successors and assigns on behalf of all persons seeking to acquire any interest therein.

D. "Property" shall mean the real estate described in

Exhibit "A" hereto, which is by this reference incorporated herein and made a part hereof.

E. **"Association"** shall mean Schmidt Farms Property Owners Association, Inc., an Indiana not-for-profit corporation and its successors and assigns.

F. **"Common Areas"** shall mean: any outlots so identified or other parts of the Property not comprising the feeholder lots which may be later added or defined as common areas. The common areas will be owned by, or have an easement dedicated to the Association for the common use and benefit of the members of the Association, subject to and in accordance with the provisions hereof, including but not limited to: (i) all portions of the Property conveyed to the Association pursuant to Article 4.01 hereof; (ii) all easement rights held by the Association and all facilities and equipment located therein and thereon; and (iii) any structures or improvements constructed or placed upon any part of the Community Facilities. All personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, or for the maintenance and management of any part of the Property in accordance with the provisions of this Declaration and the By-Laws, shall be deemed to be Community Facilities insofar as the same is to be owned, used or disposed of for the benefit of Owners.

G. **"Unit"** or **"Dwelling Unit"** shall mean a residential building and/or house which, as originally constructed, is integrated and designed for use exclusively as living quarters for a single family.

H. **"Building"** shall mean a structure, located on the Property, containing one (1) dwelling unit.

I. **"Parcel"** shall mean and refer to any property which (i) is owned by Developer or has been conveyed by Developer to a grantee other than the Association, and (ii) which Developer has neither designated nor conveyed to the Association for use as a Community Parcel.

J. **"Owner", "Unit Owners", or "Parcel Owners"** shall mean and refer to a record owner, whether one or more persons or entities, and including the Developer, of a fee simple title to any Dwelling Unit or Parcel, including contract sellers, but excluding those other than contract sellers having such interest merely as security for the performance of an obligation. Developer shall not be considered an Owner of unsold parcels for purposes of Section 3.01 of this Declaration.

K. **"Member"** shall mean and refer to every person or entity who holds membership in the Association.

L. **"Board"** shall mean and refer to the board of directors of the Association as constituted at any time or from time to time.

M. **"Occupant"** shall mean a person or persons who from time to time occupy a Dwelling Unit.

N. **"Occupancy Expense"** shall mean all sums incurred, expended, or proposed to be expended for the purpose of carrying out, protecting, performing, or implementing the required or permitted activities of the Board or Association hereunder or which are for the benefit of Owners.

O. **"Proportionate Share"** shall mean that amount of the Common Expense as bears the same ratio to the total amount of Common Expenses, as the number of Units owned by an Owner bears to all Units existing subject to the provisions hereof, at the time or times each respective determination (of Proportionate Share) is made. A parcel which is vacant or which is being improved with a Dwelling Unit shall be deemed to be the Unit for purposes of calculating Proportionate Share.

ARTICLE II

REAL ESTATE AFFECTED

2.01 **Property.** The property described in Exhibit "A" at all times hereafter, shall be held, transferred, sold, conveyed, used and occupied subject to and in accordance with the terms, provisions and conditions contained in this Declaration.

2.02 **Applicability of Declaration.** Upon subjection of the Property to the terms, provisions and conditions of this Declaration, unless otherwise specified by Developer, all action heretofore taken hereunder by the Board, the Association, the Developer, its beneficiaries and their contractors, agents and employees shall be binding upon and inure to the benefit of the Parcel and Unit Owner.

However, the Owners of such Property shall not be responsible for any portion of the expenditures made by the Board or Association prior to the date such Property is subject to this Declaration, except at the election of Developer, Developer may specify any equitable adjustment of accrued expenses or anticipated expenses of the Association.

2.03 **Sub-Declarations and Agreements.** Developer, the Board, the Association and individual Owners may from time to time hereafter make further Declarations and enter into further agreements affecting the Parcel or Unit on the Property, including but not limited to, condominium declaration, maintenance and cross easement agreements and homeowner or building owner declarations. To the extent the provisions of any such agreement or declaration shall conflict with the terms, provisions and conditions hereof, then this Declaration shall govern.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 **Membership.** Each Owner of a Unit or of any Parcel shall have a membership in the Association. Membership in the Association is appurtenant to and shall not be separated from ownership of a Parcel or Unit, and each Owner shall be an Owner of a Parcel or Unit, or by accepting a conveyance of the same, be a Member of the Association, and thereby succeed to the rights and become subject to the obligations of a Member of the Association, whether or not reference is made thereto in the instrument of conveyance or any other document of ownership. Nothing contained herein shall be interpreted to exclude Developer from membership while it or its successors in interest, if any, own one (1) or more Units or Parcels.

3.02 **Voting Rights.**

- A. Each Owner shall be entitled to one (1) vote for each unit or Parcel owned by such Owner.
- B. Notwithstanding the foregoing, the Developer shall

have the right to control the Owner's Association until four (4) months after seventy-five percent (75%) of the Units in the recorded phases shall be sold or for five (5) years, whichever event shall occur first. After the Developer no longer has the right to control the Owner's Association, control shall be transferred to the Unit Owners. Developer, however, shall retain voting rights with respect to each Unit and each Parcel owned by Developer.

3.03 **Multiple and Entity Ownership.** There shall be one (1) vote and one (1) voting member for each Parcel or Unit, regardless of the number of persons who may have the ownership interest in a Unit or Parcel or the manner in which title is held by them. If any Parcel or Unit shall be owned by more than one (1) person, then such Owners shall confirm in writing to the Association the name of the person who shall be entitled to vote on behalf of such joint owners and the membership represented thereby in accordance with the provisions of the By-Laws. The voting rights of any Owner which is: (a) a corporation, shall be exercisable by its chief executive officer; (b) a corporate trustee, shall be exercisable by its beneficiary; and (c) an individual trustee, shall be exercisable by such Trustee.

ARTICLE IV  
OWNERSHIP, USE, MAINTENANCE AND EASEMENTS  
PERTAINING TO COMMUNITY FACILITIES

4.01 **Conveyance of Common Areas.** Developer shall convey to the Association any portions of the Property identified as outlots and by this reference made a part hereof, to be used as a Common Area for easements, parkways and detention and such other



purposes as may be designated by the Association. From time to time and at any time Developer may convey to the Association additional portions of the Property then owned by Developer, which when conveyed shall become a part of the Common Areas. The Association shall be obligated to accept any and all of such conveyances, and to hold such part of the Property subject to the terms and conditions hereof pertaining to Common Areas; provided, however, that any part of the Property to be conveyed which is generally designed, used or intended to provide vehicular or pedestrian access to any Parcel shall be deemed to be subject to a perpetual easement for ingress and egress appurtenant to each adjacent Parcel and also for the benefit of all other portions of the Property, whether or not expressed in the instrument of conveyance. Developer hereby reserves the right, both before and after any such conveyance, to use all Common Areas for the benefit of any other portion of the Property not subject to the provisions of this Declaration, and to provide improvements upon such Common Areas which are not inconsistent with the purpose thereof.

4.02 **Easement Privileges.** Developer hereby reserves the following rights, with respect to all portions of the property, which rights shall survive the conveyance of every Parcel and Common Area, whether or not such rights are expressly reserved in the instrument of conveyance:

A. To grant to any public or private utility having a certificate of territorial authority, any governmental authority which the Association or any other entity providing such services may have the right to install and maintain facilities and

equipment to provide utility services (including but not limited to electric, gas, water, sanitary and storm sewer, and telephone services) (whether the same shall be located in, upon or outside of the Unit or Property) for the benefit of all or any portion of the Property or the public at large;

B. To reserve or grant for the benefit of any other portion of the Property easements for drainage purposes and storm sewer purposes, and such easement rights may include the right to tap into and use all pipes and other conduits, pumping facilities and equipment on the Property utilized in connection with the disposal of surface water and sewage, which are owned by the Association or which constitute Common Areas;

C. To reserve or grant for the benefit of any other portion of the Property the right to re-enter any portion of the Property to effect repairs on all pipes and other conduits, pumping facilities and equipment, whether the same shall be located in, upon, or outside of a Unit.

D. To modify, relocate and expand the foregoing easements rights, including but not limited to the provision of rights and restrictions reasonably calculated to preserve, maintain and facilitate the use of any such easement for its intended purpose;

E. However, no such easement shall be located in any location which shall unreasonably impair the use of any Unit by its Owner as a dwelling.

4.03 **Easement Equipment.** All pipes, cables, poles and equipment installed in or as part of an easement for any of the purposes set forth in Article 4.02 above shall be a part of the

Common Areas, constituting the property of the Association, unless the same are owned by a utility company, governmental authority or unless Developer or any other person shall reserve any title or rights therein.

**4.04 Other Facilities.** The Association shall have the right to install and operate upon the Common Areas (to the extent permissible under applicable law) recreational and other facilities incidental to the residential nature of the Community and primarily for the benefit of the Owners and Occupants. Fees and charges may be imposed for the use of such facilities, provided that such facilities shall be maintained solely for the benefit of the Owners, Occupants and their guests, and the fees and charges herein permitted shall be limited to the amounts necessary to pay for the cost of operation and replacement thereof.

**4.05 Use of the Common Areas.** Subject to the provisions of Articles 4.04 and 4.07 hereof, each Owner shall have the right to the use and benefit of all Common Areas in connection with the use, possession, occupancy or enjoyment of the respective Parcels and Units owned by such Owner. Such rights shall extend to the Owners, Occupants, guests and other authorized invitees of the Owners, Occupants and the Association, and shall be appurtenant to and pass with the title of every Parcel and Unit; provided that such rights shall be subject to and governed by the provisions of this Declaration and the By-Laws, rules and regulations of the Board or the Association acting through the Board. The Association shall have the right of ingress to and egress from, under, along, over and upon the Common Areas for any

and all purposes connected with the use, maintenance, construction, operation, repair and reconstruction of any of the Common Areas.

**4.06 Maintenance and Common Expenses.** Except as otherwise provided in Section 4.04 hereof, and except to the extent the same is assumed by any person pursuant to a grant of rights or otherwise, the ownership, management and maintenance responsibilities of the Association which include: upkeep of common areas, repair, alteration and improvement of the common areas; purchase of fidelity bonds and insurance of the types and in the amounts specified in Section 5.01 of this Declaration, accounting services, legal services, payment of real estate taxes on common areas, management of Association expenses shall be at the cost and expense of the Association and all expenses in connection therewith shall be Common Expenses.

**4.07 Suspension of Privileges.** The rights to the use of Common Areas and the easements created hereunder shall be subject to suspension, with respect to any Owner or Occupant for any period during which any assessment of the Association shall remain unpaid for the Parcel or Unit owned or occupied by such person, or for any period which the Board shall determine as a result of any default in or infraction of the terms, conditions, undertakings or obligations of this Declaration, the By-laws of the Association, or pursuant to specific action of the Board or Association. No policy or action in any specific case shall limit the powers of enforcement of the Board and Association in other cases, and the Board may in its discretion seek injunctive or other legal or equitable relief to enforce its determination

to suspend privileges.

4.08 **No Dedication.** Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Areas to or for any public use or purpose whatsoever except and only to the extent specifically set forth herein. At any time and from time to time, the Board and the Developer may jointly make application to dedicate any portion of the Common Areas for public use and to subdivide any portion of the Property, both before and after the conveyance of the same, without further consent or action of the Owners; and at such time that Developer is no longer the Owner of any portion of the Property, the Board alone may exercise such prerogative. The right to make such application shall include the right to execute such documents, incur such expenses as Common Expenses and take such further and other action as shall be necessary to consummate any such dedication.

4.09 **Prior Rights.** Notwithstanding anything herein to the contrary, the rights and easements created hereunder shall be subject to easements, covenants, conditions and restrictions of record which may be prior to the provisions hereof.

SECTION V

5.01 **Specific Powers of the Board.** The Board shall acquire and shall have the power to purchase, contract for and pay for the following within the general powers hereinbefore granted, and which are herein listed for the purposes of illustration and not for the purpose of limitation:

- A. Utility Service for Common Areas. Water, waste

removal, electricity, telephone, heat, power and other necessary utility if not separately metered or charged to the Parcels or Units.

B. Casualty Insurance. Insurance against loss or damage by fire and all other hazards normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects including those covered by the standard "all risk" endorsement covering all of the Common Areas (exclusive of land, foundations and excavation) but including fixtures and building service equipment that are considered part of the Common Areas as well as common personal property and supplies. Said insurance shall be in an amount equal to the maximum insurable replacement value of the above-described property and shall contain a maximum deductible of the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. Each casualty insurance policy must be written by an insurance carrier which carries a B general policyholders rating and a III financial size category or as an alternative, an A general policyholders rating. Casualty insurance policies shall contain an Inflation Guard Endorsement when it can be obtained and Construction Code, Demolition Cost, Contingent Liability from Operation of Building Laws, Increase Cost of Construction, and Steam Boiler and Machinery Coverage endorsements. All casualty insurance policies shall show the Owner's Association as the named insured and must also contain the standard mortgage clause. The casualty insurance policy shall require the insurer to notify the Owner's Association and each first mortgage holder named in the mortgage clause in

writing at least ten (10) days before it cancels or substantially changes the Project's coverage.

C. Liability Insurance. Comprehensive public liability insurance, including liability for injuries to death of persons, and property damage, in such limits as it shall deem desirable (but not less than One Million Dollars [\$1,000,000.00] for bodily injury and property damage for any single occurrence), and other liability insurance as it may deem desirable, insuring each owner, the Association, its officers, members of the Board, the Developer, the manager and managing agent, if any, and their respective beneficiaries, employees and agents (to the extent that any or all of the same are, in the determination of the Board, properly named as insured), from liability in connection with the ownership and/or use of the Common Areas, and legal liability that results from lawsuits related to employment contracts in which the Association is a party. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The liability policy should also provide for at least ten (10) days written notice to the Owner's Association before the insurer can cancel or substantially modify the policy.

D. Workmen's Compensation Coverage. Workmen's Compensation insurance to the extent necessary to comply with applicable laws.

E. Wages and Fees for Services. The services of any person or firm employed by the Board, including, without limitation, the services of a person or firm to act as manager or as managing agent for the Common Areas, the services of any

person or persons required for maintenance or operation of the Common Areas, and legal, accounting and other professional services necessary or proper in the operation of the Common Areas or the enforcement of this Declaration and for the organization, operation and enforcement of the rights of the Association.

F. Care of Common Areas. Landscaping, gardening, painting, cleaning, maintenance, repair and replacement of the Common Areas and such equipment used in connection therewith as the Board shall determine to be necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Areas; and all real estate taxes and other impositions upon the Common Area.

G. Additional Expenses. Any other materials, equipment, supplies, furniture, labor, services, maintenance, repairs, structural alterations or additions, insurance or assessments which the Board is required to or may secure or pay for pursuant to the terms of this Declaration or by law or which in its option shall be necessary or proper for the maintenance and operation of the Common Areas or for the enforcement or implementation of any of the terms and provisions of this Declaration.

H. Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may in the opinion of the Board constitute a lien against the Common Areas or any part thereof (rather than merely against the interest therein of particular Owners); it being understood, however, that the foregoing authority shall not be in limitation of any other



lawful action relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the costs of discharging it, and any costs incurred by the Board by reason of discharging said liens or otherwise in relation thereto shall be specifically assessed to and paid by said Owners.

I. Certain Utility Services to Parcels. The Board may pay from the maintenance fund water, taxes, waste removal and any utilities which are not separately metered or otherwise directly charged to individual Owners. However, the Board may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of his share of such expenses as determined by the Board. The Board reserves the right to levy additional assessments against any owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund.

The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire or pay for out of the maintenance fund during any one (1) calendar year, any equipment, capital additions or improvements (other than for purposes of replacing or restoring portions of the Common Areas, subject to all the provisions of this Declaration) having a total cost in excess of Ten Thousand Dollars (\$10,000.00), without in each case the prior approval of the Voting Members holding two-thirds (2/3) of the total votes; except that the Board shall be entitled to make expenditures in excess of said amount if (a) the same are approved at an annual meeting of Voting Members by a majority of the total votes represented at said meeting, or (b)

are expended to alleviate or eliminate a situation which in the discretion of the Board constitutes an emergency.

5.02 **Vouchers.** All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Association.

## SECTION VI

### Assessment-Maintenance Fund

6.01 **Common Expenses - Estimate.** Each year on or before December 1, the Board (or if the Board is not yet in effect, the Developer) will estimate the total amount necessary to pay the cost of wages, materials, equipment, improvements, additions, insurance, services and supplies which will be required or incurred during the ensuing calendar year for the performance of all services and other undertaking required or permitted herein and to be charged as Common Expenses, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization of the categories or composition thereof. Each Owner shall be assessed for a Proportionate Share of said "estimated cash requirement." On or before January 1, of the ensuing year, and each ninety (90) days thereafter, each Owner shall be obligated to pay to the Board or as it may direct, one quarter (1/4) of the annual Owners

assessments made pursuant to this Section. A late charge of Twenty-Five Dollars (\$25.00), or such other amount as may be determined by the Board from time to time, shall be added to any assessment not paid within thirty (30) days of its due date. On or before the date of the Annual Meeting of each calendar year, the Board shall supply to all Owners an itemized accounting of all expenditures for Common Expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures, plus reserves. For the purpose of this Section, Developer shall not be considered the Owner of any unsold parcels. Annual assessments shall commence at the time of the initial sale of each individual lot.

6.02 Reserve for Contingencies and Replacements. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If the annual "estimated cash requirement" proves inadequate for any reason, including but not limited to, nonpayment of any Owner's assessment, the Board may, at any time, levy a further assessment, which shall be assessed to the Owners in Proportionate Shares. The Board shall serve notice of such further assessment on all Owners responsible therefor by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the next quarterly maintenance payment which is due more than ten (10)

days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted quarterly amount. At the time of the conveyance, by a contractor or any other person who may erect Buildings upon the Property for sale, of a Unit or Parcel containing a Building, the Owner who purchases the same shall pay (in addition to that portion of the first quarterly assessment) to the Association, or as otherwise directed by the Board, an amount equal to one (1) full quarterly assessment of each Unit contained in the Property as conveyed, which amount shall be used and applied as an operating reserve for Common Expenses in the manner herein provided; together with unamortized insurance premiums and prepaid expenses which constitute a Common Expense. If any Parcel is conveyed in an unimproved state, the reserve payments required herein shall be due and payable when any Building erected therein is occupied in whole or in part.

**6.03 Budget for First Year.** When the first Board elected hereunder takes office, it shall determine the estimated Common Expenses, as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31 of the calendar year in which said election occurs. Assessments shall be levied against the responsible owners during said period as provided in Section 6.01. Nothing herein shall limit the authority of any Board serving prior to the first annual meeting of Voting Members to prepare budgets and require assessments, and to exercise all of the other rights and prerogatives of the Association and the Board hereunder.

**6.04 Failure to Prepare Annual Budget.** The failure or delay

of the Board to prepare or serve the annual or adjusted estimate on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay any sums herein provided whenever the same shall be determined, or whenever served; and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly assessment at the then pendant monthly rate.

**6.05 Books and Records.** The Association shall maintain or cause to be maintained full and correct books of account in chronological order of the receipts and expenditures. Such records and the vouchers authorizing the payment shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Owner shall be furnished a current statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such Owner, to the extent the same is then determined.

**6.06 Status of Collected Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and shall be deemed to be held for the benefit, use and account of all the Owners in their respective Proportionate Shares, except to the extent special assessments are collected for and are to be applied against, specific expenditures or obligations and except for such adjustments as may be required to reflect delinquent or prepaid assessments.

**6.07 Obligations and Rights Upon Transfer.** Each assessment

together with such interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the Owner of the Unit or Parcel at the time the assessment was levied. This personal obligation shall not pass to successors in title unless expressly assumed. Upon the transfer of a Unit, unless there is an agreement to the contrary approved by the Board, any reserves or other funds of the transferor held by or subject to the control of the Association shall be deemed transferred to the transferee of the Unit or Parcel.

**6.08 Remedies for Failure to Pay Assessments.** If an Owner is in default in the payment of any charges or assessments required hereunder for thirty (30) days after the same are due and payable, the Board may bring suit for and on behalf of itself (or the Association) and as representative of all Owners, to enforce collection thereof against such Owner personally, and may in addition thereto or in the alternative as it elects, bring suit to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due additional charges for the costs of said suit, together with interest at the rate of twelve percent [12%] per annum, compounded monthly, from the date due to the date of payment, plus reasonable attorney's fees. The amount of any delinquent and unpaid assessments and charges for interest, costs and fees as above provided, shall be and become a lien or charge against the Parcel or Unit of the Owner involved when payable, and may be foreclosed by an action brought in the name of the Board or Association as in the case of foreclosure of liens against real estate. Unless otherwise provided in this Declaration, the members of the Board and their successors in

office, acting on behalf of the Association, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Said lien shall take affect and be in force thirty (30) days after an assessment is delinquent but shall not be binding upon nor affect third persons unless and until a notice thereof is recorded with the Recorder of Deeds; provided, however, that encumbrances owned or held by any bank, insurance company, savings and loan association, or any other person providing purchase money financing, shall be prior to the lien of the Association hereunder, if the encumbrance was recorded before the delinquent assessment was due. A lien for a common expense assessment is not affected by the sale or transfer of a unit estate unless a foreclosure of first mortgage is involved. In that event, the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Owner from paying further assessments. Any encumbrancer may, from time to time, request in writing a written statement from the Board setting forth unpaid assessments and charges with respect to the Parcel or Unit covered by his encumbrance, and, unless the request shall be complied with within twenty (20) days after receipt thereof, all unpaid assessments and charges which become due prior to the date of making such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Parcel or Unit may pay any unpaid assessments and charges payable with respect to such Parcel or Unit and may, if permitted by the terms and provisions of his encumbrance, have a lien on such Parcel or Unit

for the amounts paid at the same rank as the lien of his encumbrance. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Parcel or Unit.

SECTION VII

Covenants and Restrictions as to Use and Occupancy

7.01 Use. The Common Areas shall be used and occupied as follows:

A. Obstruction of Common Areas. No Owner shall maintain or permit any obstruction of the Common Areas or any common area shared by more than one (1) Owner, nor shall anything be stored in or on the Common Areas without the prior consent of the Board.

B. Alterations of Common Areas. Nothing shall be altered or constructed in or removed from the Common Areas except upon the written consent of the Board. No waste shall be committed to the Common Areas.

C. Prohibited Activities and Signs. No signs, posters or advertisements of any kind or description shall be erected, maintained or displayed on any Common Area, visible to public view. The provisions hereof shall not apply to the Developer. No trade or business of any kind or character nor the practice of any profession shall be conducted, maintained or permitted on the Common Areas.

D. Development Activities by Developer. During the period of construction of any Dwelling Units and Common Areas on the Property, the Developer and its contractors and



subcontractors, and their respective agents and employees shall be entitled to access, ingress and egress to any Common Area.

SECTION VIII

Incorporation of Association

8.01 **Formation of Corporation.** Developer, prior to the election of the first Board, and the Board at any time thereafter, may cause to be incorporated a corporation under the laws of the State of Indiana, to facilitate administration and operation of the Property, and to assume the responsibilities of the Association hereunder.

SECTION IX

General Provisions

9.01 **Associations.** An association shall have all the duties and obligations of an Owner hereunder, provided that the right of an association hereunder shall be derived solely from the Unit Owners who are members thereof, and shall be exercisable by any such association only to the extent permitted by its organizing documentation or by the acts of its Unit Owners, and provided further that an association shall not be obligated to pay any portion of the Common Expenses unless the Association shall elect to require the same from the association in lieu of payments from the individual Unit Owners therein.

9.02 **Encumbrances.** No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Common Areas or any other part of the Property other than his own Parcel or Unit.

9.03 **Negligence of Owner.** If, due to the negligent act or omission of an Owner or of an Occupant of a Dwelling Unit owned by an Owner, or a contractor, employee, agent, of such Owner or Occupant, damage is caused to the Common Areas, then such cost shall be paid for by the Owner and Occupant by or under whom the damage was caused, unless the act or omission is covered by insurance and the insurance proceeds are sufficient to pay for and are applied to all required repairs and/or replacements. The liability of an Owner and Occupant for any such damage which be joint and several; and it shall not be a defense that the person causing the damage was not authorized to perform the specific act out of which the damage was incurred.

9.04 **Joint Facilities.** To the extent that equipment, facilities and fixtures within Dwelling Units shall be connected to similar equipment, facilities or fixtures affecting or serving the Common Areas, then the use thereof by an Owner shall be subject to the rules and regulations of the Board. An authorized representative of the Association or the Board, or of the manager or managing agent for the Common Areas, shall be entitled to reasonable access to any Dwelling Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving the Common Areas.

9.05 **Abatement and Enjoyment.** The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board and the Developer the right, in addition to the rights set forth in the next succeeding section:

A. To enjoin, abate or remedy by appropriate legal proceedings (including, but not limited to, a suit for damages), either at law or in equity, the continuance of any breach.

**9.06 Phasing and Expansion.**

A. **Original Property.** Developer shall develop the property described in Exhibit "A", otherwise referred to as "Phase 1" containing fifty-four (54) lots in one (1) phase.

B. **Additional Property.**

(1) **Contemplated Annexation by Declarant.**

It is the intention of the Declarant and/or Developer to submit Additional Property, together with other improvements to be constructed thereon, and all drainage easements, rights and appurtenances belonging thereto, to the provisions of this agreement, so that the same will become in all respects part of the development.

(2) **Reservation of Option to Expand.**

Declarant and/or Developer hereby expressly reserve the option at any time within a period of five (5) years, commencing on the date this Declaration is filed for record, to take the action so contemplated in submitting all or any part of the Additional Property, together with other improvements to be built thereon, and all drainage easements, to the provisions of this agreement, to that the same will become, in all respects, part of the property as defined in ¶9.06(A) above.

(3) **Limitations on Declarant's Option.**

Unless otherwise specified in this paragraph, there are no limitations on Declarant's and/or Developer's option to annex or add the Additional Property to the agreement. The consent of the Association to annex or add such Additional Property is not required.

(4) **Additional Property.** Declarant or Developer, in their absolute discretion, may annex or add all or any part of the Additional Property in whatever quantity, amount, sequence or order that it may determine. There are no limitations on Declarant or Developer as to the amount of Additional Property to be added, the sequencing or order of such additions, nor as to the boundaries or size of such additions.

(5) **Location and Type of Improvements.**

Unless otherwise specified in this Article, there are no limitations imposed on Declarant or Developer as to the location of any improvements that may be made to any portion of the Additional Property, nor any restrictions as to the type and amount of improvements which must or may be made on the Additional Property by Declarant or Developer.

(6) **Structures.** The structures to be constructed on any Additional Property shall be compatible with the existing structures on the property defined in ¶9.06(A) above in terms of quality of construction. The structures to be constructed on the

Additional Property need not be compatible with the existing structures on the property in terms of principal materials used, architectural style, size, elevation, or occupancy.

(7) **Limited Common Areas and Facilities.**

Declarant or Developer reserves the right to designate any portion of the Additional Property as Common Areas and Recreational Facilities for the use and enjoyment of any Structures or Units to be constructed thereon.

(8) **Reservation of Right to Amend**

**Declaration.** Declarant hereby reserves the right to amend this Declaration in such respects as Declarant may deem advisable in order to effectuate the generality of the foregoing, so as to: (a) include any or all of the Additional Property and the improvements which may be constructed thereon as part of the property; (b) include descriptions of buildings constructed on said property and to add drawings thereof to the appropriate exhibits hereto; (c) provide that the Owners of lots or units in the buildings will have an interest in the Common Areas and Recreational Facilities of the property.

(9) **Consent and Approval for Annexation**

**Amendments.** Declarant, on its own behalf as the owner of all lots in the property and on behalf of all subsequent lots, hereby consents and approves, and each lot owner and his mortgagees by acceptance of a deed

conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this paragraph, including without limiting the generality of the foregoing, the amendment of this Declaration by Declarant, in and all such lot owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

(10) **Power of Attorney, Coupled With an Interest.**

Each lot owner and his respective mortgagees, by the acceptance of a deed conveying such ownership or a mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Declarant his attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, in the event that the Declarant exercises the rights reserved above, to add to the additional property, to execute, acknowledge and record for and in the name of such lot owner, an amendment of this agreement for such purpose and for and in the name of such respective mortgagees, a consent to such amendment.

**9.07 Developer's Rights and Responsibilities.**

A. Developer is allowed to hire a managing entity to manage the Association and the entity will be compensated at a fair rate. The Developer cannot directly or indirectly bind the Association to a professional management contract unless the contract includes a right of termination without cause that the

Association can exercise at any time after the transfer of control. This right of termination should not require the payment of any penalty or an advance notice of more than ninety (90) days.

B. In order to insure that the Association will have the funds necessary to meet unforeseen expenditures or to purchase any additional equipment or services, the Developer shall establish a working capital fund equal to at least three (3) months' estimated common charges for each Unit. Each Unit's share of the working capital fund should be collected at the time of the sale of the Unit is closed and should then be transferred to the Association for deposit.

**9.08 Service of Notices on Board.** Notices required to be given to the Board or the Association may be delivered to any member of the Board or officers of the Association, either personally, or by mail, addressed to such member at his last known address. The method for service of such notices may be changed from time to time by the Board, provided that such Voting Member is notified of such change.

**9.09 Service of Notices on Owners.** Notices required or desired to be given to an Owner may be delivered either to the Owner, or any Co-Owner or the Voting Member having the privilege of voting with respect to the Unit or Parcel of such Owner, and delivery by mail at the last known address of such person, by personal delivery, or by posting on the door or insertion in mailbox of such Owner shall be sufficient service thereof.

**9.10 Covenants to Run with Land.** Each grantee of the Developer, by the acceptance of a deed of conveyance, and each

purchaser under Articles of Agreement for Trustee's Deed, or any contract for any deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or served by this Declaration, and all rights, benefits and privileges of each character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest in said land, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

9.11 **Non-Waiver of Covenant.** No covenants, restrictions, conditions, obligations and provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

9.12 **Waiver of Damages.** Neither the Developer, nor its beneficiary, nor their respective representatives or designees, shall be liable for any claim whatsoever arising out of or by reason of any action performed pursuant to this Declaration, whether or not such claim (a) shall be asserted by any Owner, Occupant, the Board or the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall raise ex contractu or ex delicto (except in case of gross negligence). Without limiting the generality of the foregoing the foregoing enumeration



includes all claims for, or arising by reason of, the Property or any part thereof being or becoming out of repair or any act or neglect of any Owner, Occupant, the Board, the Association, and their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function, or disrepair of, any utility services. However, this Section 9.15 shall not affect or impair liability otherwise assumed or imposed upon Developer in connection with sales of Parcels or Units.

9.13 **Amendments to Declaration and By-Laws.** This Declarant reserves the right to make any changes or modifications to the Declaration and/or the By-Laws by instruments in writing and any time prior to the transfer of control of the Association as defined in Section 3.02. Thereafter, this Declaration and/or the By-Laws may be changed, modified, or rescinded by instruments in writing setting forth such change, modification or rescission signed and acknowledged by the Board, upon the approval of sixty-seven percent (67%) of the Owners and their eligible mortgagees. Provided further, however, that Declarant reserves the right, and is hereby granted the consent of each Owner, to execute and record amendments to this Declaration to company with the requirements of the secondary mortgage market (such as Federal National Mortgage Association, Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Association, the Veterans Administration, or any governmental agency, public agent, or quasi-public entity), in order to induce any of such agencies or entities to make,

purchase, sell, insure, guarantee, or otherwise deal with first mortgages covering Units. The Declarant's rights to make such amendments shall terminate upon the transfer of control of the Association as defined in Section 3.02 hereof. The change, modification or rescission shall be effective upon recording of such instrument in the Office of the Recorder of Deeds of Lake County, Indiana. No change, modification, or rescission of any provision of this Declaration affecting the Developer shall be effective as to the Developer unless the Developer consents thereto in writing.

**9.14 Right of Action.** The Association, and any aggrieved Unit Owner, shall have a right of action against any Unit Owner who fails to comply with the provisions of this Declaration, the By-Laws, Articles of Incorporation, or the rules and regulations promulgated by the Association. Unit Owners shall have a similar right of action against the Association for its failure to comply with the provisions of the above-referenced documents.

The City of Crown Point is hereby declared to be a third party beneficiary of the terms and provisions of this section, and shall have the right to enforce the provisions of this section by specific performance, injunction, breach of contract, and/or by any other means available at law or in equity, and the Developer, Declarant, Owner, or Owners, on behalf of themselves and their successors and assigns do hereby waive any and all defenses to such assignment and enforcement rights.

**9.15 Perpetuities and Restraints on Alienation.**

A. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or

void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the date of the now living lawful descendants of the Governor and the United States Senators from the State of Indiana serving on the date of recordation hereof.

B. The Association may not restrict a Unit Owner's right to sell, transfer, or convey his Unit. Notwithstanding the above, however, any lease or rental agreement must be in writing and subject to the Declaration, Articles of Incorporation, By-Laws and rules and regulations of the Association. In addition, no Unit may be leased or rented for a period of less than thirty (30) days.

9.16 Ownership by Trust. In the event title to any Parcel is conveyed to a land title holding trust under the terms of which all powers of management, operation and control of the trust property remain vested in the trust beneficiary, then the trust estate under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this declaration against such Parcel; and such beneficiaries shall be entitled to exercise all of the rights and powers of the Owner in title to a Unit or Parcel as fully as if such beneficiary were the Owner of record. No liability shall be asserted against any such title holding trustee personally for the payment of any

claim, lien or obligation or for the performance of any agreement, covenant or undertaking hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part thereon, but the amount thereof shall continue to be a charge or lien upon the Parcel, notwithstanding any charges in the beneficial interest of any such trust or transfers of title to such Parcel.

**9.17 Indemnity to Board Members.** The members of the Board and the officers thereof or of the Association, or Developer or any beneficiary or other person exercising the powers of the Board and Association pursuant to Section V hereof, shall not be liable to any Parcel or Unit Owner for any mistake of judgment, or any acts or omissions made in good faith as such member or officers or acting official. The Parcel and Unit Owners shall indemnify and hold harmless each of such members, officers and acting officials against all contractual liability to others arising out of contracts made by such members or officers on behalf of the Parcel or Unit Owners or of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. Such members or officers shall have no personal liability with respect to any contract made by them on behalf of the Parcel or Unit Owners or of the Association. The liability of any Parcel Owner arising out of the aforesaid indemnity shall be limited to a Proportionate Share of the total liability thereunder.

**9.18 Severability.** Should any part, term, or provision of this Declaration be declared or decided by any Court to be illegal, or in conflict with the law of this state or

jurisdiction wherein this Declaration is to be performed, the validity of the remaining portions, terms, or provisions, shall not be affected thereby and said illegal part, term or provision shall be deemed not to be a part of this Declaration.

**9.19 Condemnation, Destruction or Termination.**

A. **Damage or Destruction and Restoration of Buildings.** In case of fire or any other disaster the insurance proceeds shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the Dwelling Unit.

In the event of fire or other casualty or disaster loss resulting in less than complete and total destruction of a Building or Dwelling Unit, the improvements shall be reconstructed and the insurance proceeds applied to reconstruct the improvements.

Reconstruction of the improvements, as used in this Section, means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before.

B. **Condemnation.** In the event that any portion or all of the Property which has been subjected to this Declaration is condemned, the proceeds shall be divided among the Owners in the same percentage as each Owner holds an interest in the Common Areas and Facilities condemned and the property condemned shall be considered removed from the Declaration. The distribution of proceeds shall be subject to the interest of all mortgage lien

holders. The Association shall act on behalf of all Owners with regard to the negotiation and/or defense of any condemnation proceedings.

C. **Termination.** The Owners by unanimous vote may remove the Property from the provisions of the Declaration by an instrument to that effect duly recorded provided that the holders of any and all liens affecting any of the Units agree and/or consent thereto and their liens shall be transferred to the percentage of the interest of the Owner in the Property. Upon removal of the Property from the provisions of the Declaration, the Property shall be deemed to be owned in common by all of the Owners according to their respective percentage ownership interests which shall be the same as their percentage of interest in the Common Areas and Facilities.

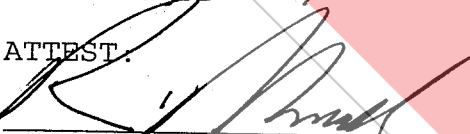
IN WITNESS WHEREOF, the said SCHMIDT FARMS DEVELOPMENT, LLC has caused this Declaration of Conditions and Restrictions for Schmidt Farms, City of Crown Point, Lake County, Indiana, to be signed by its Manager, and attested by its Secretary, and its corporate seal to be hereunto affixed this 17<sup>th</sup> day of January, 2005.

Schmidt Farms Development, LLC

BY:

  
Its Manager

ATTEST:

  
Its Secretary



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 Douglas R. VanDerNoord, Manager of Schmidt Farms Development, LLC, an Indiana Limited Liability Company and Douglas R. VanDerNoord, to me known to be such Manager of said LLC and acknowledged the execution of the foregoing Declaration of Conditions and Restrictions for Schmidt Farms for and on behalf of said Company and by its authority.

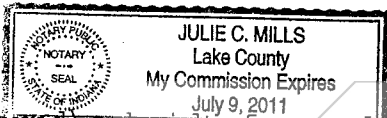
WITNESS my hand and Notarial seal this 17<sup>th</sup> day of January, 2005.

Julie C. Mills

My Commission Expires: July 9, 2011 County of Residence: Lake

This Instrument Prepared By:

Michael L. Muenich  
Attorney at Law  
3235 - 45th Street, Suite 304  
Highland, Indiana 46322  
219/922-4141



~~vander and schmidt farms declaration~~



EXHIBIT ``A``

Legal Description

Schmidt Farms, Phase 1, Lots 1 through 54, all inclusive, an addition to the City of Crown Point as recorded in Plat Book 96, Page 53 in the Office of the Recorder, Lake County, Indiana.

