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**DECLARATION OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
AND HOMEOWNER'S ASSOCIATION  
FOR THE GATES OF ST. JOHN  
LAKE COUNTY, INDIANA  
COMMERCIAL LOT  
UNIT 17-A**

CM 420058999

2006 083391

This Declaration, is made and entered into this seventeenth (17<sup>th</sup>) day of July, 2006, BLB ST. JOHN, LLC, An Indiana Limited Liability Company (hereinafter referred to as "Declarant" and "Developer").

**WITNESSETH**

WHEREAS, the Declarant is the owner of the real property legally described in ARTICLE I of this Declaration, and referred to herein as "THE GATES OF ST. JOHN".

WHEREAS, Declarant desires to subject said real property to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, all of which are for the benefit of said property and the owners' thereof, and shall inure to the benefit of and shall pass with said property, and each and every parcel thereof.

WHEREAS, Declarant and Developer have developed a Homeowner's Association for all lots in THE GATES OF ST. JOHN and the owner shall be a member.

NOW, THEREFORE, Declarant hereby declares that the real property described and referred to in Article I hereof is, and shall be, held, transferred, sold, conveyed, occupied, and subject to the conditions, covenants, restrictions, reservations and easements (hereinafter collectively referred to as "Covenants")

**ARTICLE I  
PROPERTY SUBJECT TO DECLARATION**

The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to the Covenants set forth herein, is located in Lake County, Indiana, and is referred to herein as THE GATES OF ST. JOHN-UNIT 17-A and is legally described on Exhibit "A", attached hereto and made a part hereof.

**ARTICLE II  
GENERAL PURPOSES OF THIS DECLARATION**

The real property described in Article I herein is subject to the covenants declared herein to insure the proper use and appropriate development and improvement of THE GATES OF ST. JOHN and every part thereof; to protect the owners of the property thereof against the erection of buildings and structures improperly or unsuitably constructed; to insure adequate and reasonable development

This document is being re-recorded to correct the legal description on Exhibit "A"

PEGGY HOLINGA KATONA  
LAKE COUNTY AUDITOR

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JUL 21 2006

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

MICHAEL A. JOHNSON  
RECORDER

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of said property; to encourage erection of attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to secure and maintain proper setback, and adequate free space between structures; and in general, to achieve a residential and commercial area of the highest quality and caliber.

**ARTICLE III**  
**GENERAL RESTRICTIONS**

**A. LAND USE AND BUILDING TYPE**

The property contained in this unit shall be used for the purpose or purposes designated by the zoning ordinance established by the Town of St. John and the Plat recorded by the Declarant and Developer.

**B. ACTIVITIES**

i. No noxious or offensive activity shall be carried on, in, or upon any premises, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance.

ii. No livestock, bees, poultry, over four (4) months of age, or more than (2) dogs or two (2) cats, without unusual vicious propensities, shall be kept or maintained in connection with any lot. All pets shall be leashed or fenced in and the fencing used to contain pets shall be approved by the Developer or Architectural Review Committee (ARC).

iii. No burning of refuse shall be permitted.

iv. The use of any driveway or parking area which may be in front of or adjacent to or part of any lot as a habitual parking place for campers, trailers, mobile homes, motor boats, houseboats, sailboats, motor homes or commercial vehicles is prohibited.

v. Campers, commercial vehicles, trailers, motor boats, houseboats and motor homes may be maintained and housed completely within a structure. No roadways in the Development shall be used for the habitual parking of private or commercial vehicles or boats or trailers.

vi. The term "commercial vehicles" shall include all trucks (3/4 ton or larger), construction equipment and vehicular equipment which bear signs or have printed on the side of said vehicle, reference to any commercial undertaking or enterprise. The habitual violation of the parking regulations set forth in this paragraph shall be deemed a nuisance. Pick-up trucks (3/4 ton or smaller) and vans (3/4 ton or smaller), with or without a commercial name, shall be an exception to this exclusion.

vii. No building shall be located or maintained within the utility and drainage easements within the real estate. The removal of such as required by the Town of St. John, Lake County, Indiana, or any public utility or governmental agency shall be at the sole cost and expense of the lot owner.

**C. SIGNS**

The owner of this lot may not indicate that the Lot thereon is "for sale" or "for rent" by posting a sign on the property. All other signs to be erected on the property or affixed to the building shall be approved by the ARC prior to its erection.

**D. PLANT DISEASES OR NOXIOUS INSECTS**

No plants or seeds, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a lot.

**E. NAMEPLATES AND HOSPITALITY LIGHT STANDARDS, TELEVISION OR RADIO ANTENNAE AND TOWERS, FLAGPOLES, STORAGE SHEDS OR AIR CONDITIONING UNITS**

- i. No free-standing or outdoor television antennae tower, satellite dish or radio antennae shall be erected or used without the express written approval of the Architectural Review Committee. Approved dishes cannot be installed on the street number side of the home, unless specifically permitted, in writing, by the Developer.
- ii. No lines or wires for communications or the transmission of electric current or power shall be constructed or placed anywhere on the real estate other than within the building or accessory buildings unless the same shall be contained in conduits, or except where indicated on the plat of subdivision of the real estate and except for easements heretofore granted for electric transmission lines, if any. No satellite dishes, microwave dishes, or television dishes are permitted on any lot, without the written approval of the Architectural Review Committee.
- iii. Flagpoles are permitted, provided the flagpole is not more than twenty-five feet (25') in height.
- iv. No window or wall heating, ventilation, air conditioning (HVAC) shall be a component of the central units.
- v. No free-standing structures, detached garages, metal, prefab or steel storage sheds shall be erected on the property, unless permitted, in writing, by the Developer or Architectural Review Committee. If the Developer, or ARC, permits a storage shed to be erected on the property, said structure must match the exterior of the building in style and color, including roof and siding color and materials.
- vi. If all or any portion of a building is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof with all due diligence, to rebuild, repair or reconstruct such building in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty.

**F. TEMPORARY STRUCTURES**

- i. No trailer, basement or incomplete building, tent, shack, garage, barn, motorized building, and no temporary building or structure of any kind shall be used at any time for a building either temporary or permanent without the written approval of the Architectural Review Committee.
- ii. Temporary buildings or structures used during the construction of the building shall be on the same lot as the building, and such buildings or structures shall be removed upon the completion of construction. Said buildings or structures must first be approved by the Developer.

iii. No building shall be moved from another location to a lot in this subdivision. No modular home, log cabin, pre-fabricated structure, steel framed, or foam/concrete composite structure shall be erected on any lot.

**G. UNDERGROUND WIRING**

No lines or wires for communication of the transmission of electric current or power shall be constructed, placed or permitted to be placed anywhere in THE GATES OF ST. JOHN other than within buildings or structures or attached to their walls, unless the same shall be contained in conduits or approved cables constructed, placed and maintained underground.

**H. MAINTENANCE OF ROAD, PARKWAYS, PEDESTRIAN WALK EASEMENTS AND LAKE**

i. The owners of each lot in THE GATES OF ST. JOHN shall be responsible for the maintenance of the parkway located between their lot line and edges of street pavements on which said lot falls.

ii. In addition, each lot owner shall be responsible for the installation and maintenance of the pedestrian walks in the easements, which are located within their lot (front, rear and sides of property).

iii. All lot owners shall be responsible for erosion control maintenance of their lot and parkway.

iv. To the extent that compliance is required with Rule 5 of the Indiana Department of Environmental Management concerning soil erosion practices each contractor and/or lot owner erecting the residence or building on a lot in this subdivision shall be required to conform and comply with all soil erosion practices.

v. The discharge or dumping of any harmful chemicals, paper, boxes, metal, wire, junk or other refuse on or in any area shall be prohibited and the cost of removing same shall be borne by the party depositing or causing the same to be deposited thereon. In the event the responsible person or party cannot be determined, then the lot owner shall be responsible for the removal and cleaning of the lot. Garbage containers may not be stored outside or must be in approved outside enclosures.

**I. LANDSCAPING AND FENCING**

(a) Within three (3) months from the date of occupancy of any structure, the owner of any lot shall plant at least two (2) trees within each strip of land adjacent to each street curb abutting the lot. Such trees shall be not less than fifteen feet (15') in height and shall be chosen from the following list of species:

Botanic Names

Acer platanoides  
Acer saccharum  
Celtis occidentalis

Common Names

Norway Maple (seedless)  
Sugar Maple  
Hackberry

Fraxinus Americana  
 "Autumn Purple"  
 Fraxinus pennsylvanica  
 Lancedata  
 Ginkgo biloba  
 Gleditsia triacanthos

Quercus borealis  
 Tilia cordata

Autumn Purple Ash  
 "Marshall's Seedless Ash"

Ginkgo (male only)  
 Thornless Honeylocust  
 (seedless)  
 Red Oak  
 Little Leaf Linden (seedless)

(b) Within three (3) months from the date of occupancy of any structure, the owner of any lot shall plant at least three (3) trees or ornamental shrubs within the boundaries of the lot. Such trees or ornamental shrubs shall be not less than 1-1/2 inches in diameter, measured at a height of six inches above the finished ground level and shall be chosen from the following list of species:

Common Names

Red Maple (seedless)  
 White ash (seedless)  
 Blue Ash (seedless)  
 Green Ash (seedless)  
 Hesse European Ash  
 Big Leaf Linden (seedless)  
 European Hornbeam  
 American Hornbeam  
 Tulip Tree  
 Flowering Crab  
 Magnolia  
 Shademaster Locust

White Oak  
 English Oak  
 Sawtooth Oak  
 Burr Oak  
 Village Green Zelkova  
 Flowering Pear (fruitless)  
 Shawness Brave Cypress  
 Katsura Tree  
 Hickory  
 Flowering Plum  
 Sunburst Locust

(c) Within three months from the date of occupancy of any structure the owner of any lot shall sod the front, side and rear yards, provided however that sodding shall not be required between October 15<sup>th</sup> and April 30<sup>th</sup> if occupancy occurs after September 15<sup>th</sup> of that year. Each required front, side and rear yard, as defined and required by Area Width and Yard Regulations of the St. John Zoning Ordinance.

(d) Cyclone or solid fencing will not be permitted, for any purpose. All fencing shall be self-maintaining or maintenance free. Fences and hedges may not be installed in required front or side yards and may enclose not more than twenty-five percent (25%) by area of any required rear yard for the purpose of protecting or providing privacy for pools and patios. All fences must be approved in advance by the Architectural Review Committee, or Developer.

(e) Any residence or building erected on any lot shall connect all footing and sump drainage to the public storm sewer, provided however that downspouts or other roof or surface drainage shall be discharged to the lot surface and not the storm sewer, provided further, that driveways may drain to the street curb. No downspout, sump pump or other storm or drainage discharges shall be connected or emptied into the sanitary sewers serving the real estate.

(f) Lots abutting or adjoining wetlands, lakes, ponds and/or detention areas shall be landscaped within one (1) month of the issuance of the occupancy permit. The owner of the lot shall implement all erosion controls as necessary and required, immediately and continuously.

(g) If the lot owner does not complete the landscaping including any erosion controls as required, the Developer has the right to complete the required landscaping and erosion control and charge the lot owner for all costs associated therewith and if not paid by the lot owner within 30 days, the Developer has the right to place a lien on the lot owner's property and proceed with every remedy of law, to foreclose on said lien, and all costs associated with said lien and foreclosure thereof shall be charged to lot owner, including attorney's fees and court costs.

#### **J. DRIVEWAY REQUIREMENTS**

No building erected or placed on the Lot in the Development shall be occupied in any manner at any time prior to the installation and construction thereon by the Owner thereof (at the Owner's sole expense), of a concrete, brick, or asphalt paved driveway and parking lot.

#### **K. EXTERIOR COLOR PLAN**

The Architectural Review Committee or Developer shall have final approval of all exterior color plans and each Owner must submit to the Developer or ARC a color plan showing the color of the roof, exterior walls, shutters, trim, etc. It shall then be considered the extent to which the color plan is consistent with other structures in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for THE GATES OF ST. JOHN.

#### **L. ROOFS**

Flat roofs shall not be permitted. No built-up roofs shall be permitted. The composition of all pitched roofs shall be of materials approved by the Developer or Architectural Review Committee.

#### **M. CURBSIDE MAILBOXES**

In the event curbside mailboxes (boxes not attached to the residence) are required for delivery of the U.S. Mail in the development, the owner of each lot upon which a building shall be constructed shall install, erect or place on such Lot or within any other Lot or any right-of-way in the Development only such a mailbox or receptacle as the ARC shall approve. Under no circumstances shall non-decorative, rural curbside mailbox (sometimes referred to as U.S.1, 1-1/2 or 2, etc.) be installed anywhere in the Development. The street number shall be affixed to the mailbox.

#### **N. TIME CONSTRAINTS FOR COMPLETION DATES**

The work of constructing, altering or remodeling any building on any said Lot shall be prosecuted diligently from its commencement and until the completion thereof. The complete exterior structure or shell, not including finished exterior wall materials (e.g. brick, stone or other approved material), must be completed and erected and constructed within one hundred twenty (120)

days after the date construction of any building shall have been commenced. The completion (including the roof and all exterior walls) on the building commenced to be constructed in the subdivision shall be completed within nine (9) months from the date of the issuance of a building permit.

**O. LOT MAINTENANCE**

Each lot shall at all times be kept in a clean and slightly condition. No trash, litter, junk, boxes, containers, bottles or cans shall be permitted to collect or remain exposed on any Lot, except as necessary during the period of construction and in approved containers. The Owner of each lot shall be responsible for the cutting or removal of weeds periodically (not less than one time each month) on such Lot so as to conform with the requirements, ordinances and regulations of the Town of St. John, Indiana.

**P. LOT OWNER'S RESPONSIBILITY FOR SIDEWALKS AND DAMAGE TO SIDEWALKS AND CURBS**

In the event the Village of St. John shall within two (2) years after the issuance of an occupancy permit for a building on a Lot Owner's property require the replacement or repair of curbing or sidewalks in front of the Lot Owner's Lot, the Lot Owner shall at its own expense repair or replace such sidewalk or curb in accordance with the requirements of the Village of St. John. It shall be the responsibility of the Lot Owner to prevent such damage from occurring by adequately protecting the curb and sidewalk during the construction of his home. In the event of the failure of the Lot Owner to make such repairs, Developer shall have the right to make such repair and to file a lien for any costs of the repairs incurred. In the event it becomes necessary for the Developer to sue to collect the amount of said repairs, Owner shall be responsible for the payment of Developer's court costs and attorney fees.

**Q. MEMBERSHIP IN THE GATES OF ST. JOHN HOMEOWNER'S ASSOCIATION**

The lot owner shall be a member of the Homeowner's Association and shall pay yearly assessments in an amount at five (5) times the rate paid by the individual lot owners. In addition, the lot owner shall pay at the closing, the sum of \$500.00 towards the Contingency and Replacement reserve and the balance of the annual maintenance fee.

**R. ARCHITECTURAL CONSTRUCTION AND LANDSCAPING STANDARDS AND USE RESTRICTIONS**

**CONSTRUCTION APPROVAL**

No structure shall be erected, including exterior remodeling or additions to existing structures are permitted to remain on any lot in the subdivision until the plans and specifications for that structure have been submitted to and approved in writing by the Architectural Review Committee. A structure is defined as any building, fence, pool, driveway, breezeway, parkway, sidewalk, pond, kennel, playhouse, shelter, gazebo, storage shed, barn, pool house, garage, or any other building or fixture that is permanent. Application for approval shall be submitted on the form identified as "Exhibit B".

Each lot owner must submit to the Architectural Review Committee and receive the Committee's written approval of the following items before any construction on any structure may begin:

- i. Drawings showing all four elevations and masonry areas;
- ii. Floor plan showing square footage;
- iii. Site plan showing grade plan, placement of the structure on the lot and the location of driveway and walkways and landscaping plan.

The Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, approval by the Committee will be presumed, provided that no structure, as previously defined, shall be erected which violates any of the Covenants or restrictions as set forth in this document.

Refusal or approval of plans and specifications by the Architectural Review Committee may be based upon any ground, including purely aesthetic ones.

The Architectural Review Committee reserves the power to make exceptions to these restrictions and covenants as it deems proper.

Whether or not a provision specifically states in any conveyance of any lot by the Developer, its successors or assigns, the owner or occupant of any lot, by acceptance of title thereto or by taking possession, covenants and agrees to adhere to all of the covenants, restrictions, duties, obligations and procedures as set forth in this document.

Neither the Developer, the Architectural Review Committee or their respective representatives, or any member thereof, shall be liable for any damage, loss, or prejudice suffered or claimed by any contractor or lot owner or occupier which submits such a plan or specification on account of:

- a. Any effects in any plans or specifications submitted, revised or approved in accordance with the following provisions;
- b. Any structural defects in any work done according to the 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 done pursuant to approved plans, drawings and specifications;
- e. The development of any property in The Gates of St. John.

Any person or entity submitting plans or specifications to the Developer or the Architectural Review Committee, or their representatives, or any member thereof, shall hold them harmless from all damage, loss, or prejudice suffered or claimed by any third party, including attorney's fees incurred.

The Architectural Review Committee shall consist of the Declarant and Developer and any persons designated by the Declarant.

#### CONSTRUCTION DEBRIS/SOIL EROSION/TOPOGRAPHY CHANGES

During construction on any lot in the subdivision, the owner of that lot shall remove all trash and debris resulting from construction on the lot. Each building of a dwelling unit in the subdivision shall maintain, for each lot, a dumpster for all construction debris and mud. All mud shall be removed from the street. The lot owner will specifically be held responsible for clearing the roadway



of all mud and debris placed on the road by any contractor, subcontractor or material man. Debris shall not be burned or disposed of on any property in THE GATES OF ST. JOHN.

During construction each lot owner/builder shall preserve the grade of all other lots in the subdivision. No lot owner, contractors or subcontractor, agent or employee shall disturb or cause to be disturbed any survey stakes or markers. The lot owner further assumes liability for any survey work required to re-establish said stakes and markers. No lot owner shall excavate or extract earth by any method for any purpose or change the topography of any lot which materially affects the surface grade or drainage or surrounding lots unless approval is first obtained from the Architectural control Committee or its designated representative. Each lot owner, and contractor shall return adjoining lots to their original grades condition, and in particular, shall not remove or add any fill to any lot in THE GATES OF ST. JOHN without the permission of the Architectural Review Committee. The lot owner shall be liable for any and all damage to the subdivision property, including, but not limited to, curbs, streets, streetlights and any buried pipes, cable and drainage structures.

A minimum six inch (6") thick by eighteen feet (18') wide gravel driveway shall be installed from the curb to the foundation at the garage entry when the foundation is excavated and before additional construction begins.

**CONSTRUCTION TIME**

All exterior work in the construction of any structure, including driveways and parking lots, shall be completed within nine months from the date of the issuance of the building permit. Extensions of time, for good cause, may be granted by the Architectural Review Committee.

No improvement which has been partially or totally destroyed by fire or other reason, shall be allowed to remain in that state for more than ninety (90) days from the date of such destruction or damage. Extensions of time, for good cause, may be granted by the Architectural Review Committee.

**S. DEVIATIONS AND AMENDMENTS**

The Declarant or the Developer or their assigns, reserve unto themselves the right to amend this Declaration of protective covenants and enter into agreements with the grantee of any parcel, lot or lots (without the consent of grantees of other lots or adjoining or adjacent property) to deviate from any or all of the Covenants set forth herein, provided there are practical difficulties, special circumstances or particular hardships evidenced by the grantee, and any such deviation (which shall be manifested by a written agreement) shall not constitute a waiver of any such Covenant as to the remaining real property of Declarant.

**ARTICLE IV**  
**Homeowner's Association**  
**Definitions**

When used in this Declaration, the following words and terms shall have the following meanings:

4.1 "Association" shall mean and refer to THE GATES OF ST. JOHN HOMEOWNER'S ASSOCIATION, an Indiana not-for profit corporation, its successors and or its assigns.

4.2 "Board" shall mean and refer to the Board of Directors of the Association.

4.3 "By-Laws" shall mean those by-laws duly enacted by the Association which govern the Association.

4.4. "Common Area" shall mean all lots added hereinafter, constituting the areas for the common use and enjoyment of the homeowners, including the wet bottom ponds.

4.5. "Contingency and Replacement Reserve" shall have the meaning set forth in Section 5.4.

4.6 "Declarant" shall mean and refer to BLB ST. JOHN, LLC, and its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant provided herein.

4.7 "Deed" shall mean the deed of Declarant conveying a Parcel or Unit to an Owner.

4.8. "Developer" shall mean and refer to BLB ST. JOHN, LLC, and its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant provided herein.

4.9. "Estimated Cash Requirement" shall have the meaning set forth in Section 5.3.

4.10 "Improvement" or Improvements" shall mean and include, pedestrian walkways, hedges, lawns, planted trees, shrubs and all other structures or landscaping improvements of every kind and description, within the common area of the wet bottom pond.

4.11 "Lot" shall mean each part of the Property, the size and dimension of which shall be established by the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Declarant which designated a part of the Property as a Lot for the purposes of the Declaration.

4.12 "Member" shall mean and refer to every person who holds membership in the Association and "Members" shall mean and refer to all persons who hold membership in the Association.

4.13. "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

4.14. "Municipality" shall mean the Town of St. John, Lake County, State of Indiana.

4.15 "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Parcel including contract sellers, but excluding those having such interest merely as security for the performance of any obligation. The term "Owner" shall

include the Developer/Declarant to the extent that it owns Parcels and also includes the interest of Developer or of Declarant as contract seller of any Parcel.

4.16. "Parcel" shall mean a part of the Lot on which a Unit is constructed or to be constructed which may be deeded to a Unit Owner in fee simple and shall have a separate legal description.

4.17. "Person or Persons" shall mean all natural individuals, corporations, partnerships, trustees or other legal entities capable of holding title to real property.

4.18 "Property" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto and made a part hereof.

4.19. "Single Family" shall mean one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than three persons not related, maintaining a common household in a Unit.

4.20. "Special Amendment" shall have the meaning set forth in Section 7.7.

4.21. "Subdivision Plat" shall mean the plat of subdivision for THE GATES OF ST. JOHN as recorded in the Office of the Recorder of Deeds of Lake County, State of Indiana.

4.22. "Turnover Date" shall have the meaning set forth in Section 7.3.

4.23. "Unit" shall mean and refer to a single-family residence intended for the shelter and housing of a single family.

**ARTICLE V**  
**DECLARATION PURPOSES AND**  
**PROPERTY SUBJECT TO DECLARATION**

5.1. The Declarant has created the common areas and a wet bottom ponds for future owners of Parcels, units, pods and lots.

(a) The Declarant desires to provide upon the Property, and through its planning and layout, the harmonious development of common areas and wet bottom ponds by the imposition of the covenants, conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the owners.

(b) By the imposition of covenants, conditions, restrictions and easements and the reservation of certain powers as herein contained, Declarant intends to provide a plan for development of the Property which is intended to enhance and protect the values of Declarant's single-family community.

(c) The Declarant desires to (i) prevent improper use of Parcels which may

depreciate the value of the Owner's property; (ii) maintain and manage the common area; (iii) ensure adequate and reasonable development of the Property; (iv) provide for maintenance of landscaping, signs and any other item located in the common area; (v) provide mowing, care for, mosquito abatement and general maintenance of the common area and the wet bottom pond; (vi) in general, provide for the highest quality environment for the Development.

(d) The Declarant desires to provide for the maintenance of the Common Area which shall be owned and used in common by the homeowners, and all other lots added hereinafter.

5.2. To further the general purposes hereby expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property at all times, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements set forth in this Declaration.

5.3. Declarant may, at any time, for any reason, without limitation, add, remove or withdraw any lot or lots from this phase or any subsequent phase or phases by filing a Statement or Declaration of addition, removal or withdrawal with the Recorder of Deeds of Lake County, Indiana.

**ARTICLE VI  
GENERAL RESTRICTIONS**

6.1. No noxious or offensive activity shall be carried on, in or upon the common areas, nor shall anything be done thereof which may constitute or become an annoyance or nuisance to the owners; No plants or seeds or other conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or suffered to exist in the common areas.

6.2. Except as expressly provided herein, no temporary building, trailer, mobile home, recreational vehicle, tent, shack, or other similar improvement shall be located upon the common area.

6.3. All additional landscaping, e.g., flowers, trees, shrubs, must be approved by the Board of Directors of the Association.

**ARTICLE VII  
HOMEOWNER'S ASSOCIATION**

7.1. The Developer shall form a not-for-profit corporation to be known as the GATES OF ST. JOHN HOMEOWNER'S ASSOCIATION, which shall provide for maintenance and operation of the Common Area and wet bottom ponds and enforcement of these covenants and restrictions.

7.2. (a) The Association shall have a Board of not less than three (3) directors who shall be elected by the Members of the Association at such intervals as the Articles of Incorporation and the By-Laws of the Association shall provide, except (i) that vacancies in the Board

occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the Articles of Incorporation or By-Laws and (ii) that the first Board and subsequent Boards (until the Turnover Date) shall be appointed by the Developer. Except for directors of the Board appointed by the Developer, all directors shall be Members of the Association. The Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more directors and continue to exercise its right to appoint the remaining directors of the Board until the Turnover Date.

(b) The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the corporate charter or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The directors and officers of the Association shall not be liable to the Owners or any other for any mistake of judgment or any acts or omissions made in good faith as such directors or officers.

7.3. The Developer shall, through the Board appointed by it in accordance with Section 5.2, exercise control over all Association matters, until the first to occur of the following: (a) the date which is twenty (20) years from the date of this Declaration (b) the date of the sale and conveyance of legal title to all of the Parcels to Owners other than Declarant or an assignee of Declarant as provided in Section 9.12 occurs, or (c) the date Developer elects voluntarily to turn over to the Members the authority to appoint the Board, which election shall be made by directing the Declarant to execute and record in the Office of the Recorder of Deeds of Lake County, Indiana an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date."

7.4 (a) Every lot owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of these lots. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any of its successors in interest own one or more Parcels or Units.

(b) Prior to the Turnover Date, the Association shall have two classes of voting membership:

Class A. Class A members shall be all the Owners as defined in Article I with the exception of the Declarant. Class A members shall be entitled to one vote for each Parcel in which they hold the interest required for membership by Article V.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to six (6) votes for each Parcel or Parcel that a Unit could be built on in which it holds the interest required for membership by Article V, provided that the Class B membership shall cease and be converted to Class A membership no later than the first to occur of the following:

- (1) One year after 75% of the lots have been conveyed to Parcel purchasers, or
- (2) Five years after the first Unit and Parcel is conveyed to a purchaser.

From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Parcel owned by him/her on each matter submitted to a vote of Members; provided, however, that where there is no more than one Owner of a Parcel, such co-owners of a parcel shall be entitled to one vote.

7.5 The Association, through the Board, shall have the power and duty to:

- (a) Maintain and otherwise manage the common area and all improvements thereon.
- (b) Establish and maintain a Contingency and Replacement Reserve in an amount to be determined by the Board.
- (c) Maintain, at the expense of the defaulting Owner, all drainage areas and facilities located on the Property in accordance with the reasonable and acceptable engineering requirements of the municipality in the event that one or more owner(s) fail to do so.
- (d) Provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems and lighting.
- (e) Mow, care for, mosquito abatement, infrastructure maintenance, grading, maintain and remove rubbish from any vacant or unimproved portions of the Property and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Property neat in appearance and in good order. The foregoing rights shall not apply to any Lot, Parcel or Unit or other portion of the Property owned by Declarant.
- (f) Make such improvements to the Common area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two thirds (2/3) of the Members of the Association acting in accordance with its articles of incorporation and By-Laws; and
- (g) Enforce the covenants and restrictions as may be reasonably required.

The Association may at its discretion provide maintenance for the following items with or without special charge to Owners:

1. Replacement of trees, grass and shrubs.
2. Repair and maintenance of sewer and water lines.
3. Repair and maintenance of pedestrian walks and driveways.
4. Care of trees, grass and shrubs situated within enclosed areas;

(h) The cost of any maintenance which, by the terms of this Declaration, the Association is required to furnish, shall be paid for with funds from the annual assessment to which each parcel is subject under the provisions of Paragraph 5.5.

If the Association furnishes maintenance with respect to a Parcel thereon at the request of an Owner other than required by this Declaration, the Association will require such Owner to pay the cost thereof.

(i) Exercise all other powers and duties vested in or to the Association, and not specifically reserved to the Members by this Declaration, the Articles of Incorporation or the By-Laws.

7.6. The Board shall also have the authority and responsibility to obtain and maintain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workers' compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, each member, the Association, its officers, the Board, the Declarant, and their respective employees and agents from liability and insuring the officers of the Association and the Board from liability for any good faith actions taken beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties by having a severability of interest endorsement. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with this Article IV. The Association shall also have the authority and responsibility to obtain and maintain insurance policies covering the Common Area against loss or damage by fire and such other hazards contained in customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable. The Association shall also have the authority to obtain such other kinds of insurance as the Association shall from time to time deem prudent.

7.7. The Board, officers of the Association and the employees and agents of any of them shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Article V hereof. To the extent possible, the Board's and Association's liability hereunder and the Owner's indemnification obligation shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

7.8. (a) Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board.

(b) Until the Turnover Date, Developer shall have the right, but not the obligation, to maintain the Common Area and all signs and monuments located thereon and, in its sole discretion, pay all expenses and costs arising in connection with the Common Area, including, without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area. Declarant shall convey the Common Area to the Association on or before the Turnover Date.

(c) Developer shall be entitled at all times to conduct the sale of Parcels and Units, from the Property and shall have the right, for itself and its agents, employees, guests and invitees, to utilize roads, streets, Common Area and all other portions of the property, excluding sold Parcels, for such purposes until all Parcels are sold. Developer may at all times utilize signage, lighting and establish sales offices and model homes as required to conduct its sales and marketing of the Property.

**ARTICLE VIII  
ASSESSMENTS**

8.1. Each Owner, by taking title to a Parcel, shall be deemed to be covenanted and agrees to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen expenses, to be collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a lien on the Parcel against which each assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees shall be the personal obligation of the person who was the Owner of such parcel at the time when the assessment fell due. The personal obligation of an Owner shall not pass to his successors in title unless expressly assumed by them.

8.2. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Property and in particular for the improvements and maintenance of the Property, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area. Such uses shall include, without limitation, the cost of all general real estate taxes, insurance, repair, replacement and maintenance and other charges required or permitted by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation the established and maintenance of a Contingency and Replacement Reserve. The annual assessments provided for herein shall commence for each parcel on the first day of the month following delivery of a Deed to an Owner.



8.3. Each year on or before November 1, the Board will estimate the total amounts of maintenance expenses necessary to pay the cost of wages, material, taxes, insurance, services, supplies and any other necessary or desirable items which will be required during the ensuing calendar year (January 1-December 31) for services authorized by the Board, together with a reasonable amount necessary to fund the Contingency and Replacement Reserve, and shall on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be assessed equally amongst all of the Owners, excluding the Declarant (except as provided in Paragraph 6.12 hereof). On or before January 1 of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 6.3. On or before the date of the annual meeting of each calendar year, the Board shall furnish to all Owners an itemized accounting of the maintenance expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amount collected from the Owners pursuant to assessments made during such year and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Parcel has been paid. Such certificates shall be conclusive evidence of payment or nonpayment of any assessment thereon.

8.4. (a) The Board shall accumulate and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvements and expenditures from the contingency and Replacement Reserve having a cost in excess of One Thousand Dollars (\$1,000.00) shall require the prior approval of a simple majority of the members present at the meeting at which any such expenditure is considered, in person or by proxy.

(b) If the Contingency and Replacement Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a special assessment which shall be assessed equally among the Owners, excluding the Declarant. The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of any such notice of assessment.

(c) Developer shall collect, from each initial purchaser of a Parcel or unit at the closing of the sale of any such Parcel or Unit, the sum of \$500.00, representing the annual assessment, which amount shall be deposited in the Contingency and Replacement Reserve. On the Turnover Date, the Developer shall transfer all funds in the Contingency and Replacement Reserve account to the Association and the Association shall hold and apply such funds for the purposes set forth in Section 6.4. The Declarant and Developer shall have no right to utilize any portion of such funds prior to the Turnover Date.

8.5. When the first Board elected by the Members hereunder takes office, it shall determine the Estimated Cash Requirement for the period commencing on the first day of the

month following the date when the Turnover Date occurs. The initial Estimated Cash Requirement shall be assessed equally among the Owners, excluding the Declarant.

8.6. The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay his share of such Estimated Cash Requirements as herein provided, and when the Estimated Cash Requirement shall be determined, and in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.

8.7. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Common Area, specifying and itemizing the maintenance and repair expense of the Common Area and any other expenses so incurred. Such records and the vouchers authorizing the payments described therein shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a Mortgage at such reasonable time or times during normal business hours when required by an Owner or by the holder of a Mortgage. Upon five (5) days prior written notice to the Board, any Owner shall be furnished a statement on his/her account, which statement shall set forth the amount of any unpaid assessments or other charges due and owing from such Owner.

8.8. All funds collected hereunder shall be held and expended for the purposes designated herein, and hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

8.9. Any assessments or other charges which are not paid when due shall be delinquent. If the assessment or charge is not paid within thirty (30) days after the due date, the assessments shall bear interest from and after the due date at the lesser of the rate of twelve percent (12%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Parcel or Unit, and interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of any such overdue assessment. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Parcel or Unit of any such Owner when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of mortgage liens against real estate. The directors of the Board and their successors in office, acting on behalf of the other owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired to the fullest extent permitted by law, any court shall be authorized to restrain the defaulting owner from reacquiring his interest at such foreclosure.

8.10. In addition to the rights of remedies set forth in Section 6.9, if any Owner shall default in the payment, when the same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Unit and shall have the right, on behalf of the other Owners, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the circumstances and, in addition, to exercise any other rights or remedies provided in the Forcible Entry and Detainer Act.

8.11. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed on the Parcels or Units. In the event of the issuance of a deed pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for assessment authorized by this Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed.

8.12. No assessment shall be levied against the Declarant until the Parcel or Parcels affected have had construction of a Unit or Units completed and sold.

#### ARTICLE IX

#### EASEMENTS

9.1. Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Area:

(a) Each Owner and their respective guests, invitees and employees shall have a non-exclusive easement for use and enjoyment in and to the Common Area subject to the following: (i) right of the Association to pass reasonable rules and regulations relating to such use and enjoyment, (ii) the right of the Association to suspend an Owner's right to use or enjoy such easement for any period during which such Owner may be in violation of this Declaration, (iii) the right of the Association to levy assessments as herein provided, and (iv) any and all rights reserved to Declarant, Developer and the Association as herein provided.

(b) A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements is hereby granted to the Association and reserved by the Declarant over, under, across and through the common area. If any such drainage or utility facilities are not installed or in any easements for such purposes are not created with respect to a Lot, Parcel or Unit or any portion thereof prior to delivery of a Deed to an Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute and record any such easements with respect to any Lots, Parcels or Units owned by said Owner for the benefit of the Property. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

9.2. The Declarant, Developer, Association and any of their respective agents, employees and independent contractors shall have the right to enter upon the common Area and any Parcel or Unit to the extent necessary for the purpose of maintaining, repairing and replacing the

common area as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Developer, Association, or any of their agents, employees or independent contractors shall not be guilty of trespass.

9.3. The Declarant, Developer and the Association hereby reserve the right to grant easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, operation and inspection of utility services over, under, across and through the Common Area as they deem necessary or desirable in order to effectuate the intent of this Declaration.

## ARTICLE X GENERAL PROVISIONS

10.1. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Board, or the Owner of any Parcel or Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded in the office of the Recorder or Lake County, Indiana after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinabove provided.

10.2. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time during which such covenants may be valid, then said covenant shall continue and endure only until the expiration of twenty-one years after the death of the last to survive of the class of persons consisting of all the lawful descendants of George W. Bush, President of the United States, living at the date of this Declaration.

10.3. If at any time or times the Board shall deem it necessary or advisable to re-record this Declaration, or any part thereof, in the Office of the Recorder of Deeds of Lake County, Indiana, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained, it shall subject the matter to a meeting of the Members of the Association called upon not less than ten (10) days' notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such re-recording; the Board shall have and is hereby granted, power to so re-record this Declaration or such part thereof, and such re-recording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the re-recorded document executed and acknowledged by each of them.

10.4. Each Grantee of Declarant, by taking title to a Parcel and each Purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every 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 or estate in said land, and shall

inure to the benefit of such person in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

10.5. Developer and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Parcel any Improvement which is and remains in violation of the covenants above set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof (in the manner provided in Section 9.14 hereof) from Developer or the Association to the Owner of any such Parcel, then Developer or the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Developer and the Owners to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation.

10.6. Subject to the provisions of Section 8.7, the Owners may revoke, modify, amend or supplement in whole or in part any or all of the covenants, obligations and conditions contained in this Declaration and may release all or any part of the Property from all or any part of this Declaration. Any such revocation, modification, amendment or supplement may be made effective any time if the Owners of at least two-thirds (2/3) of the Parcels and the Developer's consent thereof, the consent of the Developer being required so long as the Declarant owns any Parcels. Any such revocations, modifications, amendments or supplements shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting Owners, certified by the Secretary of the Association and recorded in the Office of the Recorder of Deeds of Lake County, Indiana.

10.7. Declarant hereby reserves the right and power to record a special amendment (hereafter referred to as "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or grant first mortgages encumbering any Lot, Parcel or Unit, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereof. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to

record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be, said power shall be irrevocable. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot, Parcel or Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments. Subject to the provisions of Section 7.12 hereof, the right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds title to any Lot, Parcel or Unit.

10.8. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property.

10.9. In the event title to any Parcel is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then 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, obligations and undertakings chargeable or created under this Declaration against any such Lot, Parcel or Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon said Parcel and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Parcel.

10.10. All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine includes the feminine and neuter and vice versa.

10.11. If a court of competent jurisdiction shall hold invalid or unenforceable any part of this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

10.12. Notwithstanding anything herein to the contrary, either or both of Declarant and Developer, as Declarant and Developer in their sole discretion may determine, hereby reserve the right to transfer, assign, mortgage or pledge any and all of either's respective privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Lake County, Indiana. Upon such assignment, either or both of Declarant and Developer, as the case may be, shall be relieved from any liability arising from the performance or nonperformance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the right of either or

both of Declarant and Developer as the case may be, shall have or incur any liability for the obligations or acts of any predecessor in interest.

10.13. If the Association fails or refuses to maintain the Common Area and the entry in accordance with the terms and conditions of this Declaration, then the Municipality shall so notify and advise the Association in writing. If the Association fails to so maintain the Common Area and entry within sixty (60) days of receipt of said notice by the Association, the Municipality shall be authorized to enter upon and correct any deficiencies in the maintenance of the Common Area and entry. The Municipality shall be entitled to record a lien against the Common Area for its costs and expenses in correcting the deficiencies with the Recorder of Deeds of Lake County, Indiana. Upon the Municipality's receipt of reimbursement for its costs and expenses, the Municipality shall promptly execute, acknowledge and deliver any releases of lien as may be required to release any claim of lien that may have been placed of record.

10.14. Each Owner of a Parcel shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the street address of the Parcel or Unit owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mails, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant shall be sufficient and proper notice to such owner and shall be deemed delivered on the third (3<sup>rd</sup>) day after deposit in the United States mails.

10.15. Each owner of a Parcel and the Homeowner's Association accepts the wet bottom pond in an "as is" condition without exception. Each owner of a parcel and the Homeowner's Association hereby releases and forever discharges, the Declarant, and any persons involved in this development, their heirs, executors, agents and assigns, employees, officers, firms or corporations from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever and particularly on account of all injuries both to person and property, which have resulted from the erection, construction and use of the wet bottom pond.

#### ARTICLE XI

A. The Declarant, the Developer or any Owner shall have the right to enforce the Protective Covenants contained herein in any manner provided for in the Protective Covenants or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any object to improvements constructed in violation of this Declaration, or to otherwise compel compliance with the Protective Covenants. The failure of the Declarant, the Developer or any Owner to take enforcement action with respect to a violation of the Protective Documents shall not constitute or be deemed a waiver of the right of the Declarant, Developer or Owner to enforce the Protective Covenants or in any other manner arising out of the Protective Covenants, the Declarant, Developer or Owner bring such action shall be entitled to recover from the other party all attorneys' fees and court costs incurred in the action.

B. The Covenants set forth herein shall run with the land and bind all parties claiming by, through, or under them. Each owner or owners of any of the above land or lots, from time to time, shall have the right, jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the Covenants above set forth, or any of

them, in addition to the right to bring an ordinary legal action for damages. Whenever there shall have been built on any lot of THE GATES OF ST. JOHN, any structure which is and remains in violation of the Covenants above set forth, or any of them for a period of 30 days after actual receipt of written notice of such violation by the owner of such lot, in addition to the foregoing right, the right to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass.

In no event shall the failure of owners of each lot to enforce any of the Covenants set forth herein, as to a particular violation be deemed to be a waiver of the right to do so as to any subsequent violation.

C. The lot owners in THE GATES OF ST. JOHN may revoke, modify, amend or supplement in whole or in part, any or all of the Covenants and Conditions contained in this Declaration and may release from any part all of said Covenants all or any part of the real property subject thereto, in the following manner:

i. Any such change or changes may be made effective at the end of the first 15 year period from the date of recording of this Declaration if three fourths (3/4ths) of the record owners consent thereto;

ii. Any such change or changes after 30 years from the date of recording of this Declaration, may be made effective if at least two-thirds (2/3rds) of the record owners of said lots consent thereto.

iii. Any such consents shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting owners and recorded in the Office of the Recorder of Deeds in Lake County, Indiana.

D. A recordable certificate by a title guaranty company doing business in Lake County, Indiana, as to the record ownership of each lot shall be deemed conclusive evidence thereof with regard to compliance with the provisions of this paragraph. Upon and after the effective date of any such change or changes, it or they shall be binding upon all persons, firms, and corporations then owning property in THE GATES OF ST. JOHN, and shall run with the land and bind all persons claiming by, through or under any one or more of them.

E. All Covenants and other provisions set forth herein shall be subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereafter executed, encumbering any of the real property in THE GATES OF ST. JOHN, and none of said Covenants or other provisions shall supersede or in any way reduce the security or affect the validity of such mortgage or deed of trust in the nature of a mortgage. However, if any such property is acquired in lieu of foreclosure, or is sold under foreclosure of any mortgage or under the provisions of any deed of trust in the nature of a mortgage, or under judicial sale, any purchaser at such sale, his or its grantees, heirs, personal representatives, successors or assigns shall hold any and all such property so purchased or acquired subject to all the Covenants and other provision of this Declaration.

F. If a Court of competent jurisdiction shall hold invalid or unenforceable any part of any covenants or provisions contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

G. All notices shall be sent by certified mail to the address of each lot owner or to the lot if no other address is known.

H. In the event of a violation of the Protective Covenants, the Declarant or Developer shall send notice to the lot owner as required and in the manner stated in Article XI, Paragraph G. In



the event the violation is not corrected within 30 days, the Declarant or Developer has the right to place a lien on the lot owner's property and proceed with every remedy of law, to foreclose on said lien, and all costs associated therewith including reasonable attorney fees shall be charged to the lot owner.

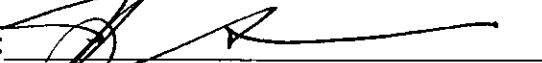
IN WITNESS WHEREOF, BLB ST. JOHN, LLC, has caused this instrument to be executed by its owners, the day and year first above written.

**BLB ST. JOHN, LLC**

LOTTON DEVELOPMENT, INC., Manager

By:   
John T. Lotton, its President

PHILLIPPE BUILDERS, INC., Manager

By:   
D. Robert Phillippe, its President

STATE OF ILLINOIS        )  
                                      ) SS.  
COUNTY OF WILL        )

I, the undersigned, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that John T. Lotton, President of Lotton Development, Inc. and D. Robert Phillippe, President of Phillippe Builders, Inc., Managers of BLB ST. JOHN, LLC, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Managers, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this seventeenth (17<sup>th</sup>) day of July, 2006.

  
NOTARY PUBLIC



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Stacey Prigge

THIS INSTRUMENT PREPARED BY:  
MAIL TO:  
ANTHONY G. CATULLO  
18141 Dixie Highway  
Suite 108  
Homewood, IL 60430  
(708) 957-8555

H:Phillippe/BLB/GATESOFST.JOHNCOVENANTS-UNIT 17A

No: 620058999

EXHIBIT "A"

## LEGAL DESCRIPTION

Lot 1407 in The Gates of St. John, Unit 17A, an Addition to the Town of St. John, as per Plat thereof, recorded in Plat Book 99 page 6, and as amended by Affidavit and Certification of Correction recorded August 25, 2006 as Document No. 2006 074692, in the Office of the Recorder of Lake County, Indiana.



**EXHIBIT "B"**

**DEVELOPER'S APPROVAL OF PLANS,  
SPECIFICATIONS AND PLOT PLAN LAYOUT**

Pursuant to Article V-Section A of the Covenants and Restrictions of THE GATES OF ST. JOHN and at the request of \_\_\_\_\_,

the Lot owner(s), the plans, specifications and plot plan layout indicated below, are hereby approved by the Developer. No buildings or structures shall be placed on said lot(s) unless in accordance with the plans, specifications and plot plan as submitted and hereby approved. No alteration in the exterior appearance of the buildings or structures shall be made subsequent to the date of this approval without the prior written consent of the Architectural Control Committee.

Architect: \_\_\_\_\_

Plan No.: \_\_\_\_\_

Plan Dated: \_\_\_\_\_

Elevation Option: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Plot Plan Layout (attach sketch or sketch out on reverse)

Dated: \_\_\_\_\_

