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Jennifer J Hayden
HAMILTON County Recorder IN
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Cross-References:
Instrument No. 2008-48442
Instrument No. 2006-67285
Instrument No. 2005-43740 and
Instrument No. 33308, Misc. Book 169, Pages 179-218

**SECOND AMENDED & RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR CONNER CREEK**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CONNER CREEK was made as of
March 1, 2009.

WITNESSETH:

WHEREAS, the Conner Creek subdivision in the Town of Fishers, Hamilton County, Indiana, was developed pursuant to the terms of a "Declaration of Covenants, Conditions, Restrictions and Easements for Conner Creek" (the "Declaration"), which was recorded in the office of the Recorder of Hamilton County, Indiana on April 23, 1982, as Instrument No. 33308, Misc. Book 169, Pages 179-218, to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Property and each owner of all or part thereof; and

WHEREAS, Plats filed with the Office of the Recorder of Hamilton County, Indiana established a total of one hundred forty-two (142) residential Lots and Dwelling Units and Common Area comprising the Conner Creek subdivision in accordance with the Declaration; and

WHEREAS, the requisite number of Owners of Lots within Conner Creek amended certain provisions of the Original Declaration and restated the remaining provisions in the "Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Conner Creek" which was recorded in the office of the Recorder of Hamilton County, Indiana on July 14, 2005, as Instrument No. 2005-43740 (the "Amended and Restated Declaration"); and

WHEREAS, the requisite number of Owners of Lots within Conner Creek subsequently approved additional amendments to the Amended and Restated Declaration consisting of the First Amendment to the same filed with the office of the Recorder of Hamilton County, Indiana on November 9, 2006, as Instrument No. 2006-67285, and the Second Amendment to the same

filed with the office of the Recorder of Hamilton County, Indiana on September 25, 2008, as Instrument No. 2008-48442; and

WHEREAS, Section 4.3 of the Amended and Restated Declaration states that its provisions, including the Exhibits, may be amended at any time upon the approval of the Owners of at least fifty-one percent (51%) of the one hundred forty-two (142) Dwelling Units; and

WHEREAS, the Board of Directors of the Conner Creek Homeowners Association, Inc. ("Association") most recently recommended that the provisions in the Amended and Restated Declaration concerning windows and doors be amended as set forth below in Exhibit "C"; and

WHEREAS, the Board of Directors of the Association gave written notice to the Conner Creek Owners with said proposed amendments; and

WHEREAS, as of March 1, 2009, the Owners of more than fifty-one percent (51%) of the one hundred forty-two (142) Dwelling Units in Conner Creek approved, in writing, the Board's proposed amendments to Exhibit "C" of the Amended and Restated Declaration; and

WHEREAS, the provisions of the Amended and Restated Declaration, as amended by the First Amendment thereto in 2006, the Second Amendment thereto in 2008, and the most recent amendments thereto, are hereby restated for the convenience of the Owners such that this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Conner Creek in no way nullifies or changes the Amended and Restated Declaration or the effective date of the Amended and Restated Declaration, as it was later amended. However, as of March 1, 2009, the Amended and Restated Declaration shall no longer be in effect and shall be replaced by the following Second Amended and Restated Declaration.

NOW, THEREFORE, all of the platted Lots and lands located within Conner Creek as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in Conner Creek. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development. Now, therefore, the Amended and Restated Declaration which is applicable to all Owners and residents within Conner Creek is hereby further amended and restated as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The following words when used in this Declaration or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

A. "The Property" shall mean and refer to the Real Estate or any part of it described in Exhibit "A" which was attached to the Original Declaration, as supplemented or amended.

B. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Association filed with the Office of the Secretary of State of Indiana, as amended from time to time. The Articles of Incorporation are incorporated herein by reference.

C. "Association" shall mean Conner Creek Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

D. "Board of Directors" or "Board" shall mean the governing body of the Association elected by the Members in accordance with the By-Laws of the Association.

E. "Building" shall mean any one of the separated structures containing either two (2) or four (4) Dwelling Units.

F. "By-Laws" shall mean the Association's By-Laws, as amended from time to time. The By-Laws are incorporated herein by reference.

G. "Common Areas" shall mean:

- (1) all portions of the Property shown upon any recorded subdivision plat of the Property, or any part thereof (other than the Initial Plat), which are not Lots or Detached Garage Spaces, other than portions thereof (such as streets) which are dedicated to the public, including all improvements and structures constructed;

(2) to the extent hereinafter established, such portions of the Property as are herein declared to be Common Area even if located on or constituting part of one (1) or more Lots or Detached Garage Spaces; and

(3) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Property as are herein declared to be Common Area whether located, installed or established entirely or partially on Lots, Detached Garage Spaces, or portions of the Property which are not Lots or Detached Garage Spaces, or on any combination of the foregoing.

H. "Limited Common Area" shall mean such portions of the Common Areas as to which the use thereof is limited or restricted in accordance with the terms hereof or by any subdivision plat of the Property to the Owners of one or more but less than all of the Lots, such as and specifically including patios, porches, fences, driveways, sidewalks, landscaping and gardening areas and garages or parking spaces not located on Lots (and which are not located on Detached Garage Spaces), but which are clearly designed and intended for use by the Owners of one or more but less than all of the Lots and which are not necessary for the beneficial use and enjoyment of all of the Lots.

I. "Common Expenses" shall mean the expenses for the administration of the Association and expenses for the upkeep, maintenance, insurance, repair and replacement of the Common Area, the exteriors of all Lots and Dwelling Units, and all sums lawfully assessed against the Members of the Association.

J. "Lot" shall mean any plot of land shown upon any recorded subdivision plat of the Property or any part thereof (other than the Initial Plat), with the exception of Common Area and

the Detached Garage Spaces, designed and intended for use as a building site for a Dwelling Unit; provided, however, that the center line of a Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between such adjacent Lots; provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall but extends outside the boundary lines (lot lines) of the Lot upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events, this Declaration and any recorded subdivision plat of the Property or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located so that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit. To the extent necessary, the boundary lines of the Lots shall be determined in accordance with the above provisions and boundary lines as so determined and shall supersede the boundary lines for Lots shown on any recorded subdivision plat.

K. "Dwelling Unit" (referred to as a "Living Unit" in the Original Declaration) shall mean a single family residence erected on a Lot within Conner Creek. For the purpose of determining membership in the Association, each Dwelling Unit shall be considered as a separate and individual unit. In addition, but solely for the purposes of determining the area constituting a "Lot" under Section J of this Article I, Dwelling Unit shall be deemed to include any enclosed, attached garage and enclosed porch appurtenant to such Dwelling Unit (which is not located on a Detached Garage Space). There are a total of one hundred forty-two (142) Dwelling Units in Conner Creek.

L. "Final Plat" shall mean and refer to each final subdivision plat for each block of the Property recorded in the Office of the Recorder of Hamilton County, Indiana, said Final Plats being incorporated herein by reference.

M. "Member" shall mean a person or entity holding a membership in the Association.

N. "Mortgagee" shall mean the holder of a first mortgage lien on a Lot or Dwelling Unit, together with any insurer or guarantor of a first mortgage, and their successors and assigns. "Eligible Mortgagee" shall mean any Mortgagee for whom its name and address has been provided to the Association pursuant to Section 13.2 below.

O. "Owner" shall mean any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

P. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Q. "Original Declaration" means the "Declaration of Covenants, Conditions, Restrictions and Easements for Conner Creek" which was recorded in the office of the Recorder of Hamilton County, Indiana on April 23, 1982, as Instrument No. 33308, Plat Book 169, Pages 179-218. The Original Declaration, together with a plat, established the initial Lots (plus Common Areas) and established the mechanism by which the Conner Creek developer would later add more Lots and Common Areas, subject to the Original Declaration. Eventually, a total of one hundred forty-two (142) Dwelling Units, and Common Areas, were established to comprise the Conner Creek subdivision.

R. "Conner Creek" means the Property, including all improvements thereon.

S. "Act" means the Indiana Nonprofit Corporations Act of 1991, as amended from time to time, codified at Indiana Code § 23-17-1-1, *et seq.*

Section 1.2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1. Declaration. The Property was and shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration which shall run with the land. The Owner of any Dwelling Unit, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the original developer or subsequent Owner of such Dwelling Unit, of (ii) by the act of occupancy of any Dwelling Unit, has accepted, or shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the right and powers of the Association with respect to or under this Declaration and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Association, and the Owners and subsequent Owners of each of the Dwelling Units affected by this Declaration, to keep, observe, perform and comply with this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 3.1. Membership. Each Owner of a Lot shall automatically become a member of the Association and shall remain a member of the Association so long as he or she owns a Lot.

Membership shall be appurtenant to and may not be separated from ownership of any Lot. If title to a Lot is held by more than one (1) person, each of such persons shall be a member. No person or entity other than an Owner may be a member of the Association.

Section 3.2. Voting. All Owners shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of Members. When more than one (1) person holds title to any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

ARTICLE IV
PROPERTY RIGHTS

Section 4.1. Easements Generally. All easements described in this Declaration are permanent easements appurtenant to and, running with, the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the Association, and their respective heirs, successors, personal representatives or assigns.

Section 4.2. Duration. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable, by the Association or the Owner of any Lot, their respective personal representatives, heirs, successors and assigns, for an initial term commencing upon the date of recording of the Original Declaration, and ending December 31, 2007, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each.

Section 4.3. Amendments. This Declaration, including the Exhibits, may be amended at any time upon the approval of the Owners of at least fifty-one percent (51%) of the one hundred forty-two (142) Dwelling Units. An amendment shall be effective only upon the recording of the same with the Hamilton County Recorder, and shall be signed by the President or Vice-President and Secretary of the Association. Amendments may be proposed by the Board of Directors or by petition signed by members representing at least ten percent (10%) of the total number of Dwelling Units. A description of any proposed amendment shall accompany the notice of any regular or special meeting of the Association at which such proposed amendment is to be voted upon. Certain amendments also require additional approval as specified elsewhere herein.

Section 4.4. Right of Enjoyment. Every Owner shall have, in common with all other Owners, a non-exclusive right and easement of enjoyment in and to the Common Area (except for the Limited Common Area) which right and easement shall include, but not be limited to, easements for ingress and egress to his Lot for himself and his invitees, for lateral support, utility, water and sewer easements, and vehicular parking (when and where permitted by the Association's Board of Directors). Such rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Board of Directors to pass reasonable rules with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same (including, but not limited to, rules restricting or limiting parking or vehicles to designated portions of the Common Areas or prohibiting the parking of vehicles thereon).
- B. The right of the Board of Directors to suspend the voting rights and right to the use of the Common Areas of a member, but not rights of access and easements necessary for the use of

his Lot, during any period in which such member shall be in default for a period of thirty (30) days in the payment of any assessment or charge, or the performance of any other term of the By-Laws or this Declaration; such rights may also be suspended, for a period not to exceed sixty (60) days for infraction of published rules and regulations. As a prerequisite to such suspension the Board must provide the member with reasonable notice and an opportunity be heard pursuant to the Act;

C. The right of the Board of Directors to levy assessments as provided in this Declaration.

D. The right of the Owners to the use of parking spaces as provided in this Article.

E. The right of each Owner to an exclusive easement on the Common Area for entrances to the Dwelling Unit on such Lot or to areas occupied by fireplaces, roof overhangs, balconies, air conditioning compressors, flower boxes, patios, and other appurtenances which are part of the Dwelling Unit; and to a reciprocal easement for access where necessary over adjoining Lots for the maintenance and upkeep of the wall, fences or other improvement.

F. The rights of the Association reserved elsewhere in this Declaration.

Section 4.5. Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-Laws of the Association, his or her right of enjoyment to the Common Areas to residents of his or her Lot, including the members of his or her family, tenants, or contract purchasers.

Section 4.6. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of (30) days as determined by the Board of Directors, such Owner's right to vote as a

member of the Association may be suspended and if suspended, shall remain suspended until all payments are brought current and all defaults remedied. Before a member's right to vote may be suspended, such member shall be given written notice that the Association intends to suspend such member's voting rights and membership and an opportunity to be heard, either orally, or in writing, prior to the effective date of the suspension as provided in the Act.

Section 4.7. Association's Rights.

A. The Association shall have the right to manage, build, reconstruct, repair, maintain, improve and operate (including by way of example, but not limited to, landscape, provide sanitation service to, and provide snow removal for) the Common Area.

B. The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any purpose allowed per this Declaration, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, subject to any prior written approval pursuant to Article XII below.

C. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities, roads, and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval pursuant to Article XII below.

D. The Property shall be subject to easements of record on the date hereof and any easements in the Common Area which may hereafter be granted by the Association subject to any prior written approval pursuant to Article XII below) to any public or private utilities or

governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area. Lots shall also be subject to easements for the maintenance of unintentional encroachments of the Common Area improvements thereon.

E. Anything herein apparently to the contrary notwithstanding, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified in Article XII below.

Section 4.8. Easements in Common. Each Owner shall have an easement in common with other Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Dwelling Units or in the Common Area, and serving such Owner's Dwelling Unit.

Section 4.9. Easement for Utilities and Public and Quasi-Public Vehicles. An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repair and maintenance of such utilities, including but not limited to water, sewer, gas, telephone, electricity and cable television on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved on the Final Plat or as thereafter approved by original developer or by the Association's Board of Directors. By virtue of this easement, the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units and over, across or under any Lot. In the event

any utility furnishing service should request a specific easement by a separate recordable document, the Association (acting through its Board of Directors) reserves the right to grant such easement on the Property, without conflicting with the terms of this paragraph. The easements granted herein shall in no way affect any other recorded easement on the Conner Creek Property.

Section 4.10. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any subdivision plat for any part of the Conner Creek Property shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Areas being reserved to the Owners and the Association as provided in this Declaration, but subject, however, to the rights of the Association to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 4.11. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, if any Dwelling Unit or Building or any improvements to any Dwelling Unit or any garage encroaches upon any part of the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Conner Creek Property, then a perpetual easement appurtenant to such encroaching Lot shall exist for the continuance of any such encroachment on the Common Area.

Section 4.12. Parking Rights. Each Lot contains parking areas (including garages) for the use of its Owner. The Board of Directors may provide additional parking spaces on the Common Area for the use of Owners, guests and invitees, subject to reasonable rules and regulations adopted by the Board. In addition, the original developer of Conner Creek

constructed some detached garages within the Property for parking and storage of vehicles (referred to as "Garage Spaces" in the Original Declaration, but referred to elsewhere herein as "Detached Garage Spaces" to distinguish the same from the garages which are attached to Dwelling Units). It was stated in the Original Declaration that the developer (Declarant) was to convey such Detached Garage Spaces by deed (or grant exclusive easements for the use of the same) to certain Lot Owners as appurtenances to the Lot owned by an Owner.

ARTICLE V
MANAGEMENT

The Board of Directors may at its discretion enter into a management agreement with a competent or duly qualified corporation or other entity ("Managing Agent") for a term not to exceed three (3) years with either party having the right to terminate upon sixty (60) days written notice, with or without cause, under which said Managing Agent will provide supervision, management and maintenance of the Common Area and, to the extent the same is not otherwise the responsibility of Owners, the maintenance of the exterior portion of the Dwelling Units and Lots, and in general assist the Board to perform all of the duties and obligations of the Association. Such management agreement may be renewed by the parties for additional terms of not more than three (3) years. If the management agreement is terminated by either party prior to expiration of its term, then the Association shall thereupon and thereafter resume performance of all duties and obligations which had been the responsibility of the management company.

ARTICLE VI
REAL ESTATE TAXES

Real estate taxes are to be separately assessed and taxed to each Lot. If for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on

the Conner Creek Property or any part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his or her pro rata share of the real estate taxes assessed to the land comprising the Property or that part thereof that is assessed as a whole, which shall be the ratio that the square footage of such Owner's Lot bears to the total square footage of all the land comprising the Property or part thereof assessed as a whole, and shall pay such Owner's pro rata share of the real estate taxes assessed on the improvements on the Property, or part thereof assessed as a whole based upon the ratio that the square footage of the Owner's Dwelling Unit bears to the total square footage of all Dwelling Units. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

ARTICLE VII
UTILITIES

Utilities, including but not limited to electricity, gas, water and telephone, shall be metered separately at each Lot or Dwelling Unit. Each Owner shall pay for all utilities servicing his or her Lot or Dwelling Unit.

ARTICLE VIII
MAINTENANCE, REPAIRS AND REPLACEMENTS

Section 8.1. The Common Area. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean attractive and sanitary condition, order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots)

shall include, but not be limited to, the following: the maintenance and repair of the Common Area improvements, such as the recreational facilities, driveways, parking areas, walkways, exterior ornamental lighting, any lake or other water retention facility installed as part of the storm and surface water drainage system of Conner Creek, and all other improvements or material located within or used in connection with the Common Area. Under no circumstances shall any obligation for the maintenance or repair of any such lake or water retention facility be imposed upon, or implied as an obligation of, any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency. As part of its management and control of the Common Areas, the Association shall snow plow the driveways and parking areas on the Common Area, unless otherwise determined through rules and regulations adopted by the Board of Directors.

Section 8.2. Lots and Exteriors of Dwelling Units. The Association shall mow, trim, and otherwise care for grass, trees, or other plants located on a Lot and for snow removal from driveways on a Lot. In order to preserve the uniform and high standards of Conner Creek, the Association shall provide certain types of exterior maintenance upon each Dwelling and Lot. Exhibit "C", which is attached hereto and incorporated herein, is entitled "Conner Creek Repair and Replacement Responsibility Guidelines" and sets forth such maintenance obligations. If an item is not listed on Exhibit "C", the determination of whether the Association or the Owner is responsible shall be at the sole discretion of the Board of Directors. In the event the need for maintenance or repair of a Dwelling Unit is caused through the willful or negligent act of its Owner, or through the willful or negligent act of the family, guests or invitees of the Dwelling Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to

and become a part of the assessment to which such Dwelling Unit and Lot are subject. Any maintenance and repair of the individual Dwelling Unit and garage for which the Owner is responsible shall be the sole obligation of and shall be performed at the sole cost and expense of the individual Owner.

Section 8.3. Lawn and Planting Maintenance. To the extent that the Board of Directors determines that the Association will water gardens and plantings established by individual Owners, the Association will not be responsible for any damage to such gardens and plantings due to overwatering, underwatering or improper watering. In lieu of maintaining separate water lines for the Common Area, the Association may draw water for such purposes from exterior sillcocks on each Dwelling Unit, provided that it rotates such drawing among all Dwelling Units by a schedule or other reasonable means so as to approximately equalize the amount of water taken from each Dwelling Unit over the course of a season.

Section 8.4. Utilities. The Association shall pay as a Common Expense all charges of water, sewer and other utilities used upon the Common Area, subject to the Association's right to draw water from exterior sillcocks on Dwelling Units or Lots as provided in Section 8.3 above.

Section 8.5. Owners Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his or her Dwelling Unit, garage (whether on his or her Lot or Detached Garage Spaces), patio and all other areas, features or part of his Lot and Limited Common Areas appurtenant thereto to the extent not otherwise maintained by the Association. An Owner shall do no act nor any work that will impair the structural soundness or integrity of a Building or an adjoining Dwelling Unit or garage, or impair any easement or hereditament, nor do any act nor

allow any condition to exist which will adversely affect the other Dwelling Units, garages or their Owners.

Section 8.6. Heating of Dwelling Units. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Dwelling Unit which might result in damage to that or other Dwelling Units, all Owners shall maintain the temperature in their Dwelling Units, at all times, at least at fifty-five (55) degrees Fahrenheit, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control. Any damage resulting from the refusal or failure of an Owner to so maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's reasonable control) the cost thereof assessed against the Lot or the refusing or failing Owner.

However, if the failure to maintain such minimum temperature is due to causes beyond the Owner's reasonable control, the cost of such repair shall be a Common Expense.

ARTICLE IX
ARCHITECTURAL CONTROL

Section 9.1. The Architectural Control Committee. As a standing committee of the Association, there shall be, and hereby is, established an Architectural Control Committee consisting of three (3) or more persons. The Architectural Control Committee shall be appointed by the Board of Directors. If not so appointed, the Architectural Control Committee shall be the same as the Board of Directors.

Section 9.2. Purposes. The Architectural Control Committee shall regulate the external design, appearance, use, location and maintenance of the Conner Creek Property and of improvements thereon in such manner as to preserve and enhance property values and to

maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

Section 9.3. Conditions. No improvements, alterations, removals, repairs, change of color, excavation, changes in grade or other work which in any way alter the exterior of any Lot or the improvements located thereon shall be made without the prior approval of the Architectural Control Committee, except as otherwise expressly provided by this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or removed on any Lot without the prior written approval of the Architectural Control Committee.

Section 9.4. Procedures. An Owner desiring to make a change as described in Section 9.3 must submit written plans and specifications to the Architectural Control Committee. The written plans and specifications must show in reasonable detail the nature, kind, shape, location, height, materials, color and approximate cost of the proposed project. The Architectural Control Committee will then review said plans and specifications and deliver a written decision to such Owner within thirty (30) days after all required materials have been submitted to the Committee. In the event the Architectural Control Committee fails to approve, modify or disapprove in writing an Owner's petition within thirty (30) days after delivery of such petition, approval will be deemed granted by said Committee. A decision of the Architectural Control Committee (if different than the Board of Directors) may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote of the Directors then serving.

Section 9.5. Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior

appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of Owners and Eligible Mortgagees in accordance with the provisions of this Declaration.

ARTICLE X
PARTY WALLS

Section 10.1. General Rules of Law to Apply. Each wall which is built as part of the original construction of any Dwelling Unit and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 10.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

Section 10.3. Destruction of Repair and Maintenance. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall or by the Association and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 10.4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 10.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 10.6. Arbitration. In the event of any dispute arising concerning a party wall, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.) The cost of arbitration shall be borne equally by the parties.

ARTICLE XI
ASSESSMENTS

Section 11.1. Personal Obligation and Lien. Each Owner of a Lot by acceptance of a deed, or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and hereby agrees to pay to the Association:

A. Annual Assessments or charges, for the payment of provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and

responsibilities under this Declaration, which expenses shall include, but not be limited to, the expenses and costs of hazard and liability insurance for Common Areas and any other common property, exterior maintenance of Dwelling Units and garages, snow removal, trash removal, sewer and water charges (if payable by the Association), outside lighting, and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other common property that must be replaced on a periodic basis which the Association may be obligated to maintain. The Annual Assessments shall be due and payable in twelve (12) equal monthly installments on the first day of each month commencing on the first day of January of each year; and

B. Special Assessments for capital improvements and operating deficits and for special maintenance and repairs;

all such assessments to be established and collected as hereinafter provided.

Any assessments, together with interest, late fees, costs (including but not limited to collection costs, if any, incurred by the Association to the Managing Agent for processing delinquent Owners' accounts) and reasonable attorney's fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Each assessment, together with interest, late fees, costs (including but not limited to collection costs, if any, incurred by the Association to the Managing Agent for processing delinquent Owners' accounts) and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner on the date said assessment became due and payable. No Owner shall escape liability for the assessments which

fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Dwelling Unit.

Section 11.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of Conner Creek, and to construct, manage, improve, maintain, repair and administer the Common Area and all pipes, wires, or other conduits of matter or energy located upon the Common Area and for the exterior maintenance of Dwelling Units and garages as provided in this Declaration. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and any other common property that must be replaced on a periodic basis and those portions of the exterior of Dwelling Units and garages which the Association is required to maintain. Such fund shall be maintained out of the Annual Assessments.

Section 11.3. Annual Assessments. For the year 2003, the Annual Assessment for "Class I Lots" is \$147.00 and the Annual Assessment for "Class II Lots" is \$158.00. For future years, the Annual Assessments shall be increased or decreased for Class I and II Lots in the same proportion, subject to the Board being able to round to the nearest dollar.

A. The Annual Assessments may be increased by the Board of Directors each year not more than ten percent (10%) above the Annual Assessment for the previous year without a vote of the membership.

B. The Annual Assessments may be increased above ten percent (10%) only by a vote of a majority of all Members who are voting in person or by proxy, at a meeting called for this purpose at which a quorum is represented. The quorum shall be as set forth in Section 2.08

of the Association's Amended By-Laws which, as of the time of this Amended and Restated Declaration, is twenty-five percent (25%).

Section 11.4. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may incur, provided that any such assessment shall have the assent of not less than a majority of all Members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is represented. The quorum shall be as set forth in Section 2.08 of the Association's Amended By-Laws which, as of the time of this Amended and Restated Declaration, is twenty-five percent (25%).

Section 11.5. Rate of Assessment. Annual Assessments must be fixed at a uniform rate for all Lots within the same Class of Lots, but annual assessments for Class I Lots may be different than annual assessments for Class II Lots. Class I Lots are those Lots whose Dwelling Units contain up to 1,250 square feet of living area, while Class II Lots are those Lots whose Dwelling Units contain more than 1,250 square feet of living area. Attached hereto and incorporated herein are Exhibits "A" and "B" which designate the Class I and Class II Lots. Special Assessments must be fixed at a uniform rates for all Lots, whether the same are Class I Lots or Class II Lots. Annual Assessments shall be collected on a monthly basis and Special Assessments shall be collected as the Board determines.

Section 11.6. Commencement of Annual Assessments. By December 1 of each year, the Board shall fix the amount of Annual Assessments against each Lot for the following fiscal year commencing January 1 and shall send written notice thereof to each Owner. At the time the Board fixes the amount of Annual Assessments, it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 11.7. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge not to exceed \$100.00, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid Annual or Special Assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any Annual or Special Assessments not stated therein as unpaid.

Section 11.8. Nonpayment of Assessments. No Owner may exempt himself or herself from paying Annual Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Dwelling or Lot belonging to such Owner. Any assessments which are not paid when due shall be deemed delinquent. Upon the failure of an Owner to make payments of any Annual or Special Assessments by the due date, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the unpaid assessment;

(2) accelerate the entire balance of the unpaid assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;

(3) suspend such Owner's right to use the recreational facilities within Conner Creek as provided in the Act; and

(4) suspend such Owner's right to vote as provided in the Act.

In addition, if any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment may be foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Association on the first day of each month of reasonable rental for such Dwelling Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof. The Board of Directors, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to collection costs, if any, incurred by the

Association to the Managing Agent for processing delinquent Owners' accounts, and attorneys fees) and interest from the date such assessments were due until paid.

Section 11.9. Subordination of Lien. Notwithstanding anything contained in this Article XI or elsewhere in this Declaration, any sale or transfer of a Dwelling Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Dwelling Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter

ARTICLE XII MORTGAGES

Section 12.1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 12.2. Notice to Corporation. Any Owner who places a first mortgage lien upon such Owner's Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Eligible Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Eligible Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Eligible Mortgagee at the address provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the

Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 12.3. Notice of Action. Any Eligible Mortgagee will be entitled to timely written notice from the Association of:

A. Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot or Dwelling Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee;

B. Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under this Declaration, the By-Laws or Articles of Incorporation by an Owner of a Lot or Dwelling Unit subject to a Mortgage held, insured, or guaranteed by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

D. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article XII; and

E. Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 12.4. Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges

against the Common Area which are in default, and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be immediately reimbursed by the Association.

Section 12.5. Discontinuance of Professional Management. When professional management has been previously required by any Eligible Mortgagee at that time or later, any decision to establish self-management by the Association shall require:

A. the consent of Owners at least sixty-seven percent (67%) of the one hundred forty-two (142) Dwelling Units; and

B. the approval of Eligible Mortgagees on Lots or Dwelling Units which have at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by Eligible Mortgagees.

Section 12.6. Termination; Reallocation. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the Conner Creek Property must have the written approval of Eligible Mortgagees on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by Eligible Mortgagees. No reallocation of interests in the Common Area or the Association resulting from a partial condemnation or partial destruction of the Conner Creek Property may be effected without the prior written approval of Eligible Mortgagees on all remaining Lots whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Lots subject to Eligible Mortgages.

Section 12.7. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Dwelling Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 12.8. Liability for Unpaid Assessments. Any first Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its Mortgage or by foreclosure by the first Mortgagee or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such Mortgage shall not be liable for the unpaid assessments of the Lot which accrue prior to the acquisition of title or possession to such Lot by the first Mortgagee.

Section 12.9. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Eligible Mortgagees (based upon one (1) vote for each Mortgage owned), and the Owners of at least a majority (or such higher percentage as is required by law) of the total number of Lots have given their written approval, neither the Association nor the Owners shall be entitled to:

- A. terminate the legal status of the Conner Creek project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);
- B. by act or omission, seek to abandon, petition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall NOT be deemed such a transfer;

C. use hazard insurance proceeds for losses to any Common Area or other common property for other than the repair, replacement or reconstruction of such common property;

D. add or amend any material provisions of the constituent documents of Conner Creek which pertain to any of the following:

Voting;

Assessments, assessment liens or subordination of such liens;

Reserves for maintenance, repair and replacement of the Common Area (or exterior maintenance of Dwelling Units or garages if applicable);

Insurance or Fidelity Bonds;

Rights to use of the Common Area;

Responsibility for maintenance and repair of the several portions of Conner Creek;

Expansion or contraction of the Conner Creek project or the addition, annexation or withdrawal of property to or from the project;

Boundaries of any Lot;

The interests in the general Common Area;

Convertibility of Lots into Common Area or of Common Area into Lots;

Leasing of Lots, Dwelling Units, or garages;

Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot, Dwelling Unit or garage;

Any provisions which are for the express benefit of first Mortgage holders or Eligible Mortgagees (except in accordance with procedures set forth in this Declaration

and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);

E. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units or garages, the exterior maintenance of Dwelling Units or garages, the maintenance of the Common Area or other common property, party walls or common fences and driveways, or the upkeep of lawns and plantings.

For purposes of this section, an addition or amendment to such documents shall not be considered material if it is made (I) for the purpose of correcting clerical, typographical or technical errors, (II) for clarification only, (III) 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, 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, (IV) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first Mortgages covering Lots and Dwelling Units, or (V) to bring such documents into compliance with any statutory requirements.

A Mortgagee or Eligible Mortgagee who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 12.10. Examination of Books and Records. First Mortgagees and Eligible Mortgagees shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 12.11. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 12.12. Designation of Representative. Any holder of a first Mortgage on a Lot or Dwelling Unit may designate a representative to attend meetings of the Association's Members.

Section 12.13. Distribution of Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the By-Laws shall be construed as giving to the Owner or to any party priority over any rights of Mortgagees or Lots pursuant to their first Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

ARTICLE XIII
INSURANCE

Section 13.1. Maintenance of Insurance. The Association shall maintain, to the extent reasonably available, the following insurance:

- A. Master or blanket type policy of fire insurance with extended coverage endorsement (including vandalism, debris removal, cost of demolition, malicious mischief,

windstorm and water damage) insuring the Dwelling Units and attached garage located on each Lot or Detached Garage Space, and the Common Area (including all of the fixtures installed therein as of the date thereof, and specifically including, without limiting the generality of the foregoing, interior walls, interior doors, built-in cabinets and counters and electrical and plumbing conduits, pipes and fixtures initially installed by the developer, and any fixtures, equipment or other property within a Dwelling Unit or garage which are to be financed by a First Mortgage to be made, purchased, sold, insured or guaranteed by an agency or entity mentioned or referred to in Section 12.9.E of this Declaration, and including also common personal property, supplies, and building service equipment, but not including:

- carpeting,
- floor coverings,
- drapes,
- wall coverings,
- furniture,
- furnishings, or
- other fixtures or personal property supplied or installed by Owners or tenants,

and also not including land, foundations, excavation and other items normally excluded from coverage) and covering the interests of the Association, the Board of Directors and all Owners and their mortgagees, as their interests may appear, for full insurable replacement cost, as determined annually by the Board of Directors. If permitted by the insurance company writing the policy, improvements and betterments not part of the Dwelling Unit and garage as originally constructed may, at the direction and sole cost and expense of the Owner of the subject Lot, be

issued under a rider to the master policy, that part of the premium allocable to such improvements and betterments being chargeable against the specific Lot to which it applies. Said policy shall afford, as a minimum, protection against the following:

(1) loss or damage by fire or other perils normally covered by the standard extended coverage endorsement;

(2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows:

Conner Creek Homeowners Association, Inc. for the
use and benefit of the individual Owners.

The policies may also be issued in the name of an authorized representative of the Association including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with respect to the Common Area equally with each other Lot, and with respect to each Dwelling Unit and garage, in proportion to the insurable value of such Dwelling Unit or garage compared to the aggregate insured value of all Dwelling Units and garages. Evidence of insurance shall be issued to each Owner and First Mortgage upon request. Policies must provide for the recognition of any Insurance Trust Agreement.

If reasonably available, such policies shall include:

(1) Agreed Amount Endorsement (or like endorsement);

(2) Inflation Guard Endorsement;

(3) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subordination against Owners individually; that the Insurance is not prejudiced by an act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.

B. Workers' compensation, occupational disease and like insurance (if the Association has eligible employees).

C. Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:

(1) covering events occurring anywhere on the Common Area (and public ways, if any) or arising out of or in connection with the use, ownership or maintenance of the Common Area;

(2) covering without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and such other coverages as are customarily covered with respect to projects similar in construction, location, or use;

(3) insuring each officer and member of the Board of Directors, the managing agent and each Owner; and

(4) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. (However, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths or persons and property damage arising out of a single occurrence.)

D. Such other insurance as the Board of Directors may determine.

E. All such policies must provide that they may not be cancelled or substantially modified by any party without at least ten (10) days prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 13.2. Owners' Individual Policies. Each Owner shall be responsible for carrying insurance for his or her own benefit insuring his or her personal liability, and his or her carpeting, floor coverings, wall covering, furniture, furnishings, and other personal property, and fixtures and other property supplies or installed by him or a previous Owner or tenant. Each Owner's policy (typically referred to as an HO-6 policy) must also include coverage for, but not be limited to, appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security, and housekeeping, even if any of said appliances are "built in". Such policy should also include coverage for the Association's deductible reimbursement (see Section 13.3 below). All coverage should be on a replacement cost basis. The Association must be listed on each Owner's policy as an Additional Insured. All owners' individual policies must contain waivers of subordination and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

Section 13.3. Liability for Association's Deductible. All insurance claims covered by the Association's master insurance policy carry a deductible in an amount determined by the Board, up to a maximum of Ten Thousand Dollars (\$10,000) per occurrence. Notwithstanding anything else contained in this Declaration or the By-Laws, liability for the amount of damage within the limits of any applicable insurance deductible on a policy of insurance issued to the Association shall be in the following manner:

A. Where the damage results from a negligent or intentional act or omission by the Owner, that Owner's tenant, family, servant, employee, agent, visitor or licensee of that Owner or tenant, or from the failure to maintain any portion of the Owner's property, including any appliance, equipment, or fixture in the Owner's Dwelling Unit, that Owner is responsible for said deductible.

B. Except as provided in sub-paragraph A above, or where the damage is a result of the sole fault of the Association, if the damage involved is limited solely to one Owner's Dwelling Unit or the Limited Common Areas assigned to that Owner's Dwelling Unit, such Owner is responsible for said deductible.

C. Except as provided in sub-paragraphs A and B above, or where the damage is a result of the sole fault of the Association, if the damage involves both the Common Areas and/or one or more Dwelling Units or the Limited Areas assigned to a Dwelling Unit or Units, the deductible shall be pro-rated between the Association and any involved Owners in proportion to the relative amounts of damage to the Common Areas and to each of the affected Dwelling Units, including the Limited Areas assigned to such Dwelling Unit or Units.

All decisions and determinations to be made under sub-paragraphs A, B and C above shall be by the Association's Board of Directors, and the same shall be final and binding as between the Association and the affected Owners.

Each Owner is responsible for verifying with his or her own insurance agent that the Owner's share of any such Association deductible is covered under his or her own Dwelling Unit Owner's insurance policy (assuming the deductible is not assessed as part of the Common Expenses allocable to all Owners). The Owner should pay particular attention to the portion of his or her HO-6 policy which is typically called "Coverage A--Building Property" to ensure that there is sufficient coverage for the Owner's possible share of the Association's deductible. Any portion of such a deductible which has been assessed to a particular Owner's account will be subject to the same collection procedures as provided in this Declaration and the By-Laws for Assessments.

Section 13.4. Additional Coverages. In addition and supplemental to the foregoing powers, and not in limitation thereof, the Board of Directors shall have the authority at all times without action by the Owners to obtain and maintain in force all coverages and endorsements required by any agency or entity mentioned or referred to in Section 12.9.E of this Declaration, for the acceptance of mortgages on Dwelling Units, garages or Lots, as such requirements are amended from time to time.

Section 13.5. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such

trustee ("Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each Owner, by acceptance of a deed to his, her or its Lot, hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee is hereby required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgage holders, as their interests may appear, and to apply and administer the same as follows:

A. All insurance proceeds paid to Association or Insurance Trustee (hereinafter sometimes referred to merely as "Trustee") shall be deposited in escrow with a title insurance company or other depository acceptable to the Trustee and a majority of First Mortgagees of record.

B. The Owner of the Dwelling Unit or garage with respect to which the insured loss occurred shall, within thirty (30) days after insurance proceeds are deposited in accordance with paragraph (A) above, enter into a firm contract with a qualified person or entity providing for the reconstruction or remodeling of the Dwelling Unit or garage, to substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the Trustee for said Dwelling Unit or garage, until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the Trustee and First Mortgagee. Said

reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than one hundred eighty (180) days after said insurance proceeds are deposited in escrow as aforesaid. The Association and First Mortgagees of record of the Dwelling Units or garages affected and the Lots underlying the same shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided and any such advances shall be a lien upon the Lot or Lots subordinated, however, to the interests of First Mortgagees of record.

C. In the event the Owner fails to enter into a contract as provided in subparagraph (B) above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the Trustee or the First Mortgagee of record, with the consent of the Trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Dwelling Unit or garage, and the Trustee or First Mortgage shall have the right to have said insurance proceeds applied in satisfaction of any obligation incurred pursuant to said contracts, without liability of any kind of the Owner, including, but not limited to, interest on said insurance proceeds. The Trustee may employ any bonded party or parties as its agents in exercising those functions given to it in this Section 13.5. The Trustee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and to collect said charge from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of an insurance premium paid by the Association.

D. Disbursement of funds on deposit pursuant to subparagraph (A) above, for contracts for reconstruction or remodeling entered into under subparagraphs (B) and (C) above,

shall be made by a title insurance company or other agent ("Agent") selected by Trustee and the affected First Mortgagees of record, subject to the following:

- (1) Article IX of these covenants entitled "Architectural Controls" shall apply to all said reconstruction or remodeling.
- (2) Receipt by Agent of such sworn construction statements, lists of subcontractors, lien waivers, and receipts as it shall determine to be appropriate. Disbursements may be by periodic or progress payments, and Agent may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with plans and specifications. Agent shall be entitled to a reasonable fee for the services rendered by it, and the Trustee may collect such fee from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of insurance premiums paid by the Association.
- (3) In the event a contract is entered into pursuant to subparagraph (B) hereinabove, the written consent of the Owner to said payment of payments.
 - E. In the event that a remodeling or reconstruction contract is, for any reason, not entered into pursuant to the provisions of subparagraphs B and C hereinabove, within one hundred eighty (180) days after deposit of insurance proceeds in escrow for a damaged or destroyed Dwelling Unit or garage, as herein provided, or in the event there are excess funds after reconstruction or remodeling, the proceeds or excess, as the case may be, shall be disbursed to each Owner and Mortgagee of record of the affected Lot as their interests appear.
 - F. In the event the Owner whose property is damaged fails to make satisfactory arrangements for the repair and reconstruction of the damaged property and, in the event the

Trustee decides to repair and reconstruct the damaged property and it is determined by it that the insurance proceeds are not sufficient for all costs and expenses associated therewith, the Association or the First Mortgagee may deposit, arrange for and disburse funds over and above the insurance proceeds to complete the repair and reconstruction and to pay the costs associated and related therewith. Upon completion of the work, the Board of Directors may levy a Special-Charge Assessment against the Owner, which Special-Charge Assessment shall be a lien against the Lot having the effect of a special assessment lien under Article XI hereof, but superior to all other annual and special assessments, and which lien may be enforced in the same manner as provided herein other assessment liens. The Special-Charge Assessment shall be in the amount expended by the Trustee over and above the insurance proceeds received by the Trustee to repair and reconstruct the Owner's premises, including necessary costs, expenses and fees associated with the work.

G. Betterments or improvements made subsequent to the date of initial conveyance of a Lot by the Conner Creek developer to an Owner by any Owner to his or her Lot shall be the responsibility of the Owner to insure separately (or by rider as above provided) if he desires the same insured. If the Trustee or First Mortgagee undertakes the reconstruction or remodeling of a Dwelling Unit or garage as above provided, the same need be restored only to substantially the same condition as the Dwelling Unit or garage as of the completion of original construction thereof.

Section 13.6. Restoration of Common Area. In the event of damage to or destruction to any of the Common Area due to fire or any other casualty or disaster, the Association shall

promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area; or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Section 13.6, repair, reconstruction and restoration shall mean repair of the Common Area to substantially the same condition and architecture as they were in immediately prior to the damage or destruction.

Section 13.7. Insurance Premiums. Insurance premiums for any blanket property insurance coverage and the other insurance coverages purchased by the Association, shall be part of the Common Expenses paid by assessments levied by the Association.

ARTICLES XIV
EMINENT DOMAIN

Section 14.1. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for his, her or its Dwelling Unit, each Owner appoints the Association as attorney-in-fact for such purposes. In the

event of taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

Section 14.2. Reconstruction. In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof), and the project is terminated by the election hereinabove required, the proceeds shall be allocated equally among each Lot, payable jointly to the Owners and mortgage holders thereof.

ARTICLE XV
GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS
APPLICABLE TO PROPERTY

Section 15.1. Dwelling Unit and Lot Restrictions. No more than one (1) Dwelling Unit shall be erected or maintained on each Lot. No Dwelling Unit shall be used for purposes other than as a single family residence, nor shall any trade or business of any kind be carried on within a Dwelling Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

A. The maintenance of offices by the Association or its designated manager for purposes of management of the Property.

Lease, rental or use of a Dwelling Unit of purposes consistent with this Section.

The use of a Lot by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 15.2. Common Area Restrictions. No industry, business, trade, occupation, or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area.

Section 15.3. Obstructions. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Board of Directors except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Board of Directors.

Section 15.4. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Dwelling Unit or on or in any Common Area or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors. Nothing shall be done or kept on any Lot or in any Dwelling Unit or on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof or of the exterior of the Property and Buildings thereon shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed on

any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 15.5. Fences, Walls and Patios. No Owner shall construct, relocate, heighten, lower or otherwise move or change any fence, wall or patio upon the Property except as provided in Article IX above.

Section 15.6. No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Common area, or on any Lot so as to be visible from outside the Lot. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly materials.

Section 15.7. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept in or on any Lot, Dwelling Unit or on the Common Area of any part thereof, except that dogs, cats or customary household pets may be kept on Lots and in Dwelling Units subject to these restrictions and to rules and regulations adopted, amended or repealed by the Board of Directors; provided that such pet is not kept, bred or, maintained for any commercial purpose, and does not create a nuisance. Customary household pets such as dogs, cats, goldfish, tropical fish, canaries and parakeets may be kept in a Dwelling Unit so long as they are reasonable in number. However, no animal of any kind that has venom or poisonous or capture mechanisms, or if let loose would constitute vermin, will be allowed anywhere on the Conner Creek Property. All pets (including cats) shall be taken outdoors only if carried by its owner or under leash or other restraint and while attended by its owner. The tethering of pets in any area outside the Owner's home does not constitute "attended." Owners shall be fully liable for any injury or

damage to persons or property, including the Common Area, caused by his or her pet. The Owner shall be responsible for the cleaning of any Common Area made dirty by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Conner Creek property upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Conner Creek property to enforce local animal control laws and ordinances. (See Fishers Animal Control Ordinance.) If legal action by the Association, is necessitated the Owner is responsible for all attorneys fees, expenses and court costs.

In addition to the above, in no event will any dog that displays viciousness or ill temper be permitted anywhere within Conner Creek.

The above restrictions shall be effective on September 25, 2008 (which was the date of filing of this provision with the Hamilton County Recorder). Any animals kept within the Conner Creek Property prior to September 25, 2008 which satisfied the then-existing restrictions for pets shall be permitted to remain on the Property. However, any animals brought into Conner Creek after that date must comply with the above conditions.

When a complaint is received by the Association's management company about an offending animal, the following steps will be taken:

1. The management company will send the owner a first reminder letter about the offense.

2. If the problem is not resolved within the time set forth in the first letter, the management company will send a warning letter.

3. If the problem persists, a letter warning of legal/and or governmental action will be sent. The Association attorney and Fishers Animal Control will be copied on this letter.

4. If the problem continues, the management company will send a final letter ordering the removal of the pet from Conner Creek within ten (10) days.

5. If the problem continues, the Board shall consult with the Association attorney as to the next legal steps to be taken.

Section 15.8. Prohibited Structures and Items. No structure of a temporary character, trailer, boat, camper-bus, basketball hoops, basement, tent, or shack shall be maintained on any Lot nor shall any garage or other building except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters, either temporarily or permanently.

Section 15.9. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot. The design of such screened enclosure must be approved by the Association in accordance with the architectural control provisions contained in Article IX hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is

prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers on the patio.

Section 15.10. Vehicles. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini bikes, mopeds, unlicensed or inoperable vehicles or any other vehicles of any description other than normal parking of passenger automobiles and light duty non-commercial passenger pickup trucks shall at any time be stored or parked on any Lot outside of a garage or on any part of the Common Area, either permanently or temporarily, other than (A) within an enclosed garage, or (B) such portions, if any, of the Common Area as may be designated by the Board of Directors for such purposes.

Section 15.11. Signs. No sign of any kind (other than designations, in such styles and materials as the Board of Directors shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view of any Lot, except that a "For Sale" sign may be displayed provided that it is in such form as the Board may require.

Section 15.12. Antennae. Except with prior written approval and the authorization of the Association's Board of Directors, no exterior television or radio antennae of any sort, and no satellite dish of more than 39" in diameter, shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Property, or on the Property itself.

Section 15.13. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respect to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to

comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Dwelling Unit or Lot may be leased for a period of less than one year. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Dwelling Unit.

Section 15.14. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Dwelling Units, the Common Areas and the Limited Common Areas as the Board in its sole discretion deems appropriate or necessary.

ARTICLE XVI
GENERAL PROVISIONS

Section 16.1. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and the Association's rules and regulations adopted by the Board of Directors as each may be amended from time to time (all such documents and provisions hereafter referred to as the "Governing Documents"). The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of the Governing Documents are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or Dwelling Unit as though such the Governing Documents were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporation, partnerships, trusts, association, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit or Lot shall be subject to the Governing Documents.

Section 16.2. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the negligence of such Owner, any member of such Owner's family or its guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Each Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

Section 16.3. Costs and Attorneys' Fees. In any proceeding arising because of the failure of an Owner to make any payments required or to comply with any provision of the Governing Documents, the Association shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such default or failure.

Section 16.4. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of his or her use or enjoyment of any of the Common Area or by abandonment of his Dwelling Unit or Lot.

Section 16.5. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of the Governing Documents shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, the By-Laws, and the rules and regulations, and each shall be enforced to the greatest extent permitted by law.

Section 16.6. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall be deemed to refer to and include all genders, and the singular shall include and refer to the plural and the plural the singular.

Section 16.7. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Section 16.8. The Plat. The Final Plats of all blocks of Conner Creek are incorporated into this Declaration by reference and have been filed in the Office of the Recorder of Hamilton County, Indiana.

Section 16.9. Enforcement. Enforcement of the Governing Documents may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain the violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by the Governing Documents; and failure by the Association or by any Owner to enforce any covenant or restriction contained in the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach, or any attempted violation or breach, of any of the Governing Documents cannot be adequately remedied by action at law or by recovery of damages. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions or other provisions of the Governing Documents.

Section 16.10. Access. For the purposes solely of performing the repairs and maintenance authorized by this Declaration, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner (except in an emergency), to enter upon any Lot or Dwelling Unit.

Section 16.11. Emergency Access. For the purpose of performing emergency repairs under this Declaration, or of taking emergency action to seal a Dwelling Unit from weather or otherwise to prevent damage or destruction to any Lot or Dwelling Unit, the Association through its duly authorized agents or employees, shall have the right to enter upon any Lot or Dwelling Unit at any time, without notice, with such persons and material as the Association deems necessary, to accomplish such emergency repairs or to take such emergency action.

Section 16.12. Severability. Invalidation of any one of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 16.13. Notices. Any notice required to be sent to any member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such member appearing on the records of the Association at the time of such mailing.

Section 16.14. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

ARTICLE XVII
LEASING OF DWELLING UNITS
AND MAXIMUM NUMBER OF UNITS OWNED

Section 17.1. Limits on the Number of Leased Dwelling Units ("Rental Cap"). In order to insure that the residents within Conner Creek share the same proprietary interest in and respect of the Dwelling Units and the Common Areas, no more than ten percent (10%) of the Dwelling Units may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Article XVII. The Dwelling Units described in the next paragraph of this Section 17.1 shall count towards the ten percent (10%) "cap". Also no more than one of the Dwelling Units in any particular Building may be rented at one time. If at any time such percentage of Dwelling Units are leased or rented, an Owner who wants to rent or lease his or her Dwelling Unit which is not already rented shall be placed upon a waiting list by the Managing Agent. When an existing tenant moves out, the Owner of that Dwelling Unit shall immediately notify the Managing Agent of such fact and that Dwelling Unit cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Dwelling Units. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Managing Agent as to that Owner's intent to lease his or her Dwelling Unit. After receiving such notice, the Managing Agent shall advise the Owner if Dwelling Units may be leased or whether the maximum number of Dwelling Units within Conner Creek is currently being leased. If the maximum number of Dwelling Units is being leased, the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

Notwithstanding the foregoing, the "rental cap" described above shall not apply to any Dwelling Unit of an Owner in Conner Creek who, as of November 9, 2006 (which was the date of recording of this provision), is renting or leasing said Dwelling Unit and provides written proof thereof to the Association's Managing Agent within thirty (30) days of such date of recording. Such proof shall include a copy of each executed lease by such Owner which identifies the tenant (but which may have the rental amount deleted). The Owners of record of such currently-rented Dwelling Units shall not be subject to the provisions of this Section 17.1, including the waiting list, but shall be subject to the remaining provisions of this Article XVII. However, when the legal owners of record of any of the above-described Dwelling Units sell, transfer or convey such Dwelling Unit(s) to another Owner after November 9, 2006, such Dwelling Unit(s) shall immediately become subject to this Section 17.1.

Section 17.2. Hardship Exceptions and Waiver. Notwithstanding Section 17.1 above, if any Owner wishes to rent or lease his or her Dwelling Unit, but the maximum number of Dwelling Units is currently being leased, the Owner may request the Board of Directors to waive the "rental cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "rental cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Dwelling Unit, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfied all other requirements of this Article XVII. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (1) death, dissolution or liquidation of an Owner;

- (2) divorce or marriage of an Owner;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Conner Creek due to a change of employment or retirement of at least one (1) of such Owners;
- (4) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (5) other similar circumstances.

Section 17.3. General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors. No portion of any Dwelling Unit other than the entire Dwelling Unit shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Dwelling Unit. If such provision is not in the lease it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. The Owner cannot be delinquent in the payment to the Association of any assessments or other charges to the Association. If at any time an Owner becomes delinquent by more than fifteen (15) days, the Board shall have the right to revoke said Owner's right to lease the Owner's Dwelling Unit, even if during the term of a lease. In addition, the Board of Directors shall have the power to promulgate such additional

rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. All Owners who do not reside in the home shall provide the Managing Agent with the name of the tenant(s) and any other residents living in the home.

Section 17.4. One Year Waiting Period. In addition to all other provisions of this Article XVII, for a period of at least one (1) year after an Owner's acquisition of a Dwelling Unit, said Owner cannot lease such Dwelling Unit. After such time, said Dwelling Unit will be eligible to be leased if all other conditions of this Article XVII are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this section 17.4, if an Owner wishes to lease a Dwelling Unit prior to the end of the one year waiting period the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 17.2 above.

Section 17.5. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 17.6. Association's Copy of Lease. A copy of each executed lease by an Owner which identified the tenant (but which may have the rental amount deleted) shall be provided to the Managing Agent by the Owner within thirty (30) days after execution.

Section 17.7 Definition of "Rent" or "Lease". As used in this Article XVII, any references to "rent" or "lease" shall include any circumstance or arrangement whereby a Dwelling Unit is solely occupied by one or more non-Owners. Thus, the obligation of an occupant to pay rental to the Owner of such Dwelling Unit is irrelevant. Also, as for the last paragraph of Section 17.1 above, for an Owner of a Dwelling Unit: (1) that is solely occupied by one or more non-Owners as of the date of recording of these provisions, and (2) where there is no written lease; such Owner shall provide a written statement to the Association's Managing Agent within thirty (30) days of recording as to the circumstances of the occupancy and the names of all occupants.

Section 17.8. Violations. Any lease or attempted lease of a Dwelling Unit in violation of the provisions of this Article XVII shall be voidable at the election of the Association's Board of Directors or any other Conner Creek Owner, except that neither party to such lease may assert this provision of this Article XVII to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Conner Creek Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 17.9. Maximum Number of Dwelling Units Owned by a Single Owner. In order to encourage Conner Creek being and remaining a community where the Owners reside on the property:

(a) No owner may own more than two (2) Dwelling Units within Conner Creek at any time. This restriction shall not apply to any Owner who owns more than two (2) Dwelling Units which were purchased or with respect to which there was a binding purchase agreement prior to the recording of this restriction.

(b) If any Owner is the Owner of more than one (1) Dwelling Unit, such Owner or the majority of the principals of such Owner shall and must reside in Conner Creek in at least one (1) of such Dwelling Units, unless otherwise approved in writing by the Board of Directors upon a showing by such Owner, satisfactory to the Board of Directors, or an undue hardship as defined in Section 17.2 above.

As defined in Section 1.1(e) above, "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Dwelling Unit. As used in this Section 17.9 above, "Owner" also means those persons or entities who comprise less than all persons or entities who own in any form or manner the fee simple title or any part thereof to any Dwelling Unit and those persons or entities who have an interest in any form or manner in the fee simple title or any part thereof to any Dwelling Unit. As an example, if any person or entity owns or has any interest in the ownership of two (2) Dwelling Units, whether in his, her or its name only, as joint tenants, as life tenant or by or through any corporation, partnership, trust, limited liability company, or any other entity, that person cannot own a third Dwelling Unit, whether in his, her or its name only, as joint tenants, as life tenant or by or through a corporation, partnership, trust, limited liability company, or any other entity.

Any purchase agreement, conveyance or lease or rental agreement executed subsequent to the recording of this restriction which violates any provision of this Section 17.9 shall be voidable at the election of the Association's Board of Directors or any Conner Creek Owner, except that neither party to such agreement, conveyance or lease may assert this provision of this Article XVII to avoid its obligations thereunder. In the event of a violation, the Board of

Directors, on behalf of the Association, or any Conner Creek Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 17.10. Institutional Mortgagees. The provisions set forth in this Article XVII shall not apply to any institutional mortgagee of any Dwelling Unit which comes into possession of the Dwelling Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Dwelling Unit is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Article XVII.

The undersigned persons hereby represent and certify that all requirements for and conditions precedent to this Second Amended and Restated Declaration have been fulfilled and satisfied.

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Executed this 9 day of April, 2009.

Conner Creek Homeowners Association, Inc., by:

Patricia Bell
Patricia Bell, President

Attest:

Sandra Trospen
Sandra Trospen, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

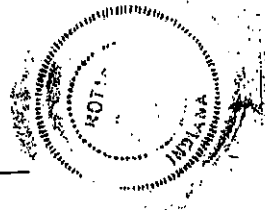
Before me, a notary public, in and for said County and State, personally appeared Patricia Bell and Sandra Trospen, the President and Secretary, respectively, of Conner Creek Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the certifications and representations made therein are true. Witness my hand and notarial seal this 17 day of APRIL, 2009.

Duke Szuglik
Notary Public - Signature

Vicki Szuglik
Printed

My Commission Expires:
3/11/15

Residence County: Hamilton



"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."
P. Thomas Murray, Jr., Esq.

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Attorney at Law, Eads Murray & Pugh, P.C., 9515 E. 59th Street, Suite B, Indianapolis, IN 46216
Telephone: (317) 536-2565

Branch :LTO,User :LTN2

Comment:

Station Id :SOCV

EXHIBIT "A" TO THE
SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR CONNER CREEK

"CLASS I" DWELLING UNITS AND LOTS BY STREET ADDRESS

503 Conner Creek Drive	541 Conner Creek Drive
504 Conner Creek Drive	545 Conner Creek Drive
505 Conner Creek Drive	546 Conner Creek Drive
508 Conner Creek Drive	547 Conner Creek Drive
511 Conner Creek Drive	548 Conner Creek Drive
515 Conner Creek Drive	549 Conner Creek Drive
517 Conner Creek Drive	550 Conner Creek Drive
518 Conner Creek Drive	551 Conner Creek Drive
521 Conner Creek Drive	552 Conner Creek Drive
522 Conner Creek Drive	553 Conner Creek Drive
523 Conner Creek Drive	558 Conner Creek Drive
528 Conner Creek Drive	562 Conner Creek Drive
529 Conner Creek Drive	564 Conner Creek Drive
530 Conner Creek Drive	565 Conner Creek Drive
531 Conner Creek Drive	567 Conner Creek Drive
532 Conner Creek Drive	568 Conner Creek Drive
536 Conner Creek Drive	570 Conner Creek Drive
539 Conner Creek Drive	571 Conner Creek Drive
540 Conner Creek Drive	573 Conner Creek Drive

Branch :LTO,User :LTN2

Comment:

EXHIBIT "A" TO THE
SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR CONNER CREEK

"CLASS 1" DWELLING UNITS AND LOTS BY STREET ADDRESS - cont'd

575 Conner Creek Drive	612 Conner Creek Drive
577 Conner Creek Drive	618 Conner Creek Drive
578 Conner Creek Drive	619 Conner Creek Drive
581 Conner Creek Drive	621 Conner Creek Drive
582 Conner Creek Drive	622 Conner Creek Drive
584 Conner Creek Drive	631 Conner Creek Drive
586 Conner Creek Drive	632 Conner Creek Drive
587 Conner Creek Drive	635 Conner Creek Drive
588 Conner Creek Drive	639 Conner Creek Drive
591 Conner Creek Drive	640 Conner Creek Drive
592 Conner Creek Drive	641 Conner Creek Drive
594 Conner Creek Drive	644 Conner Creek Drive
598 Conner Creek Drive	646 Conner Creek Drive
600 Conner Creek Drive	
602 Conner Creek Drive	
604 Conner Creek Drive	
605 Conner Creek Drive	
606 Conner Creek Drive	
610 Conner Creek Drive	

Branch :LTO,User :LTN2

Comment:

EXHIBIT "B" TO THE
SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR CONNER CREEK

"CLASS II" DWELLING UNITS AND LOTS BY STREET ADDRESS

501 Conner Creek Drive	538 Conner Creek Drive
502 Conner Creek Drive	542 Conner Creek Drive
506 Conner Creek Drive	543 Conner Creek Drive
507 Conner Creek Drive	554 Conner Creek Drive
509 Conner Creek Drive	555 Conner Creek Drive
510 Conner Creek Drive	556 Conner Creek Drive
512 Conner Creek Drive	557 Conner Creek Drive
513 Conner Creek Drive	560 Conner Creek Drive
514 Conner Creek Drive	563 Conner Creek Drive
516 Conner Creek Drive	566 Conner Creek Drive
519 Conner Creek Drive	569 Conner Creek Drive
520 Conner Creek Drive	572 Conner Creek Drive
524 Conner Creek Drive	574 Conner Creek Drive
526 Conner Creek Drive	576 Conner Creek Drive
527 Conner Creek Drive	579 Conner Creek Drive
533 Conner Creek Drive	580 Conner Creek Drive
534 Conner Creek Drive	583 Conner Creek Drive
535 Conner Creek Drive	585 Conner Creek Drive
537 Conner Creek Drive	589 Conner Creek Drive

Branch :LTO,User :LTN2

Comment:

EXHIBIT "B" TO THE
SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR CONNER CREEK

"CLASS II" DWELLING UNITS AND LOTS BY STREET ADDRESS - cont'd

590 Conner Creek Drive	625 Conner Creek Drive
593 Conner Creek Drive	626 Conner Creek Drive
595 Conner Creek Drive	627 Conner Creek Drive
596 Conner Creek Drive	628 Conner Creek Drive
597 Conner Creek Drive	629 Conner Creek Drive
601 Conner Creek Drive	630 Conner Creek Drive
603 Conner Creek Drive	633 Conner Creek Drive
607 Conner Creek Drive	634 Conner Creek Drive
608 Conner Creek Drive	636 Conner Creek Drive
609 Conner Creek Drive	637 Conner Creek Drive
611 Conner Creek Drive	638 Conner Creek Drive
613 Conner Creek Drive	642 Conner Creek Drive
614 Conner Creek Drive	643 Conner Creek Drive
615 Conner Creek Drive	645 Conner Creek Drive
616 Conner Creek Drive	647 Conner Creek Drive
617 Conner Creek Drive	
620 Conner Creek Drive	
623 Conner Creek Drive	
624 Conner Creek Drive	

**Declaration of Covenants, Restrictions and Easements for Conner Creek
CONNER CREEK REPAIR AND REPLACEMENT RESPONSIBILITY GUIDELINES
Exhibit "C"**

Item:	Description:	Owner	Association
1	Foundation, Slabs and Footings:	X	
2	Exterior Structure:		X
a.	Painting (as Scheduled) & Repairs	X	
b.	Changes & Additions *		X
3	Balconies:		X
4	Chimneys:		X
a.	Chimney Siding		X
b.	Exposed Flue		X
c.	Exterior Flashing		X
d.	Chimney Cap	X	
e.	Cleaning & Repair of Interior, Including Flue and Fire Box		
5	Roof:		X
a.	Shingles		X
b.	Underlayment (Felt Paper or "Black Paper")		X
c.	Plywood Sheathing / Oriented Strand Board	X	
d.	All Structural Components beneath the Plywood Sheathing / OSB		X
e.	Roof Leaks		X
f.	Interior Damage Repair from Roof Leaks		X
g.	Gutters and Downspouts		X
h.	Cleaning Gutters (as Scheduled)	X	
i.	Skylights * (Total Replacement)		X
6	Exterior Doors & Frames:		
a.	Entry Doors* (also see attached for approved styles)	X	
b.	Garage Door Panels* (also see attached for approved styles)	X	
c.	Patio Doors* (also see attached for approved styles)	X	
d.	Door Screens	X	
e.	Locks & Hardware	X	
f.	Caulking	X	
g.	Storm Doors *		
7	Windows:		
a.	Windows - Repairs	X	
b.	Window Replacement including frame* (also see attached for approved styles)	X	
c.	Caulking	X	
d.	Glass Cleaning	X	
e.	Glass Replacement (Includes Windows, Patio & Balcony Glass)	X	
f.	Screens		
8	Patio:		X
a.	Fences	X	
b.	Surfaces and Slats		
9	Water Lines and Pipes:		
a.	Within Structure (Including Garage)	X	
b.	Outside Structure (Leading to Sewer & Main)	X	X
c.	Outside Spigot		
10	Exterior Lighting:		X
a.	Exterior Fixtures attached to Dwelling Unit or Garage *	Utility	Company
b.	Street Lights	X	
c.	Changing all Bulbs	X	
d.	Motion Detector Lights *	X	
e.	Garden or Sidewalk Lights		

**Declaration of Covenants, Restrictions and Easements for Conner Creek
CONNER CREEK REPAIR AND REPLACEMENT RESPONSIBILITY GUIDELINES**

11	All Wiring-Electrical, Telephones, Cable, etc...	X	
12	Heating & Air Conditioning Equipment:		
	a. All Parts (except exterior flue flashing)	X	
	b. Cleaning	X	
	c. Annual Check-Up / Inspection	X	
	d. Filters	X	
	e. Emergency or Routine Service		X
	f. Flashing around Flue		
13	Internal Unit Damage (unless damage is caused by something for which Association is responsible):	X	
14	Sidewalks, Steps, Stoop & Front Porch:		X
15	Driveways & Parking Areas:		X
16	Trees - Care & Replacement:		X
17	Lawn & Shrubbery - Care & Replacement:		X
18	Garages & Garage Doors:		
	a. Concrete Slab & Flooring	X	
	b. Garage Door Panels* (also see attached for approved styles)	X	
	c. All other portions of garage door, including hardware, spring & opener	X	
	d. Garage Door Repair & Adjustment	X	
19	Fans in Dwelling Unit:		
	a. Attic Vent	X	
	b. Whole House	X	
	c. All other fans	X	
20	Exterior Painting (pursuant to schedules established by Board):		
	a. Siding		X
	b. Exterior Trim		X
	c. Gutters & Downspouts		X
	d. Chimney Boxes		X
	e. Balconies		X
	f. Decks		X
	g. Exterior Doors		X
	h. Garage Doors		X
	i. Windows		X
	j. Patio Fences		X
	k. Other Exterior Surfaces		TBD by Board of Directors
21	Radon:		
	a. Testing	X	
	b. Vents and Exterior Pipes: Other Remediation	X	

* Indicates Prior Written Board Approval Required for replacement, Addition or Alteration

NOTE: It is the responsibility of the Owner or resident to immediately notify the Managing Agent of the need for any repairs or concerns for which the Association is responsible. Failure to do so may result in the cost of said repairs to be charge to the Owner. Any damage caused by abuse or misuse from the Owner or resident will be the responsibility of the Owner of the applicable Dwelling Unit.

Branch :LTO,User :LTN2

Comment:

ATTACHMENT TO EXHIBIT "C"

Exterior Doors & Frames – 3 Choices

1. Solid Panel Door



2. Half-Moon Window Door



3. Leaded Glass / Decorative Door

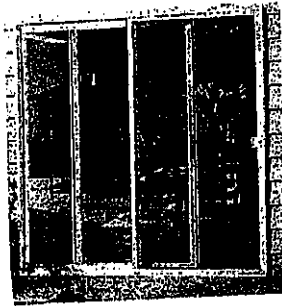


Branch :LTO,User :LTN2

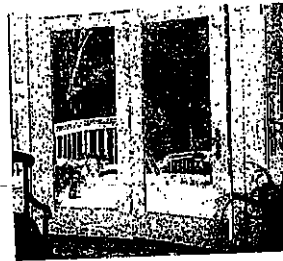
Comment:

Patio Doors – 2 Choices

1. Sliding Door



2. French Door



Garage Doors – Vehicle Sectional Roll-Up

1. Steel with Wood Texture appearance
2. Wood Panel Replacement



Windows

1. Slider windows – wood
2. Slider windows – vinyl



Branch :LTO,User :LTN2

Comment:

ATTACHMENT TO EXHIBIT "C"

Exterior Doors & Frames – 3 Choices

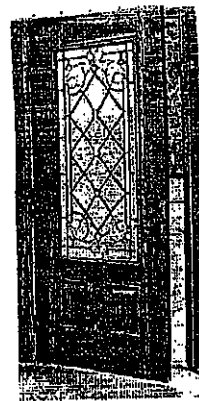
1. Solid Panel Door



2. Half-Moon Window Door



3. Leaded Glass / Decorative Door

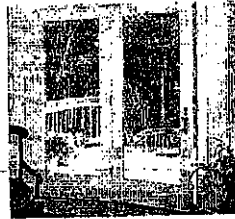


Patio Doors – 2 Choices

1. Sliding Door

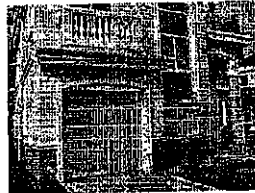


2. French Door



Garage Doors – Vehicle Sectional Roll-Up

1. Steel with Wood Texture appearance
2. Wood Panel Replacement



Windows

1. Slider windows – wood
2. Slider windows – vinyl

