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HANCOCK COUNTY RECORDER
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DECLARATION
and BY-LAWS

Establishing A Plan For Condominium Ownership
Of
CUMBERLAND TRAILS CONDOMINIUMS

Town of Cumberland
Hancock County, Indiana
Pursuant To The Condominium Property Act Of The
State of Indiana pursuant to IC 32-25-1-1 et seq
and all amendments thereto.

NAME-----Cumberland Trails Condominiums
DEVELOPER-----C & H Construction LLC

Prepared By & Mail To:
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Plot 040007975

HANCOCK TITLE

**DECLARATION OF CONDOMINIUM OWNERSHIP FOR
FAIRWAY ESTATES II CONDOMINIUMS**

This Declaration is made by C & H Construction LLC, Developer.

RECITALS:

The Developer holds title to or has a contractual interest in the Property as described in Exhibit " A " attached hereto and incorporated herein, which is located in the Town of Cumberland, Hancock County, Indiana. Developer intends to submit all of the Property to this Declaration and the Act. The Property shall consist of that area which is legally described in Exhibit A with all improvements thereon and appurtenances thereto.

The Residential Association shall be responsible for the administration of the condominium and the maintenance, repair and replacement of the Common Elements including those portions which are designated as being part of the Community Area. Each Owner of a Dwelling Unit shall be assessed to pay his proportionate share of the Common Expenses required to operate the condominium, all as more fully provided for in this Declaration.

The Developer shall retain certain rights set forth in this Declaration with respect to the Condominium Property and the Residential Association including, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, the right to come upon the Property in connection with efforts to promote the sale or rental of Dwelling Units and other rights reserved in Article Eleven.

NOW, **THEFORE**, Developer as record title holder of the Parcel and the Property, hereby declares as follows:

ARTICLE ONE
Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 **ACT:** The Condominium Property Act of the State of Indiana, IC 32-25-1-1 et. seq. as amended from time to time.

1.02 **BOARD:** The Board of Directors of the Residential Association, as constituted at any time or from time to time.

1.03 BUILDING: That portion of the Condominium Property which consists of a structure which contains Dwelling Units, including, without limitation, the structural components of such structure, the entryways, corridors, stairways, roofs, and other portions of the structure.

1.04 BY-LAWS: The By-Laws of the Residential Association which are attached hereto as Exhibit D.

1.05 COMMON ELEMENTS: All of the Condominium Property, except the Dwelling Units, or as defined in Indiana Code 32-25-2-4 as Common Areas and facilities.

1.06 COMMON EXPENSES: The expenses of administration (including management and professional services), maintenance, operation, repair, and replacement of the roads and drive and Common Elements in the Building; the cost of additions, alterations, or improvements to the Common Elements in the Buildings; the cost of insurance required or permitted to be obtained by the Board under Article Five with respect to the Buildings; utility expenses for the Common Elements in the Buildings; any expenses designated as Common Expenses by the Act, this Declaration, or the By-Laws; if not separately metered or charged to the Owners, the cost of waste removal, scavenger services, water, sewer, or other necessary utility services to the Buildings and Dwelling Units; and any other expenses lawfully incurred by or on behalf of the Residential Association for the common benefit of all of the Owners. The Common Expenses shall include any expenses relating to the operation, administration, maintenance, repair, replacement and insurance of the Community Area.

1.07 COMMUNITY AREA: All portions of the Condominium Property other than the Buildings, Dwelling Units and the Exclusive Limited Common Elements appurtenant thereto. The Community Area shall be administered, maintained, repaired and replaced by the Residential Association, as provided in this Declaration.

1.08 COUNTY: Hancock County, Indiana, or any successor thereto.

1.09 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.10 DEVELOPER: C & H Construction LLC, its successors and assigns, or such other similar entity.

1.11 DWELLING UNIT: A part of the Condominium Property, including one or more rooms, designated or intended for independent residential use and having lawful access to a public way. Each Dwelling Unit shall consist of the space enclosed and bounded by the places constituting the boundaries of such Dwelling Unit as shown on the Plat and the fixtures and improvements located wholly within such boundaries which serve such Dwelling Unit exclusively. A Dwelling Unit shall not include the following, wherever located:

- (a) any structural components of the Condominium Property; or
- (b) any component of a system which serves more than one Dwelling Unit where such component is an integral part of such system and is not intended to serve the Dwelling Unit exclusively.

Each Dwelling Unit is identified on the Plat by a distinguishing number or other symbol. The legal description of each Dwelling Unit shall refer to such identifying number or symbol and every such description shall be deemed good and sufficient for all purposes, as provided in the Act.

1.12 FIRST MORTGAGE: (Intentionally omitted.)

1.13 FIRST MORTGAGEE: (Intentionally omitted.)

1.14 LIMITED COMMON ELEMENTS: A portion or portions of the Common Elements which are designated by this Declaration or the plat as being a Limited Common Element appurtenant to and for the exclusive use of Owners of one or more, but less than all, of the Dwelling Units. Without limiting the foregoing, the Limited Common Elements assigned and appurtenant to each Dwelling Unit shall include the following ("Exclusive Limited Common Elements"): (a) perimeter doors and windows which serve the Dwelling Unit, (b) the interior surface of perimeter walls, ceiling and floors which define the boundary planes of the Dwelling Unit, (c) any system or component part thereof which serves the Dwelling Unit exclusively to the extent that such system or component part is located outside the boundaries of the Dwelling Unit, (d) patio or balcony which serve a Dwelling Unit shall be a Limited Common Element appurtenant to such Dwelling Unit, and (e) driveways and sidewalks as depicted on the survey attached to the Declaration and as amended from time to time.

1.15 OWNER: A Record owner, whether one or more Persons, of fee simple title to any Dwelling Unit, including contract sellers, but excluding those having such interest

merely as security for the performance of an obligation.

1.16 PARCEL: The real estate which is legally described in Exhibit A hereto from time, to time, together with all rights appurtenant thereto, as Exhibit A may be supplemented from time to time.

1.17 PERSON: A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.18 PLAT: The plat or plats of survey attached hereto as Exhibit B, as such Exhibit may be amended or supplemented from time to time, which set forth the measurements, elevations, and locations of the Condominium Property, the location of the planes which constitute the perimeter boundaries of each Dwelling Unit, a distinguishing number or other symbol to identify each Dwelling Unit and such other data as may be required by the Act or this Declaration.

1.19 PROPERTY OR CONDOMINIUM PROPERTY: All the land, property, space comprising the Parcel, all improvements and structures erected, constructed or contained therein, thereon or thereunder, including buildings, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment, intended for the mutual use, benefit or enjoyment of the Owners, hereby or hereafter submitted and subjected to the provisions of this Declaration and the Act as part of the Condominium Property.

1.20 RECORD: To record with the Recorder of Deeds for the County.

1.21 RESIDENT: An individual who resides in a Dwelling Unit and who is either an Owner, a tenant of the Owner, a contract purchaser of the Dwelling Unit, or a relative of any such Owner, tenant or contract purchaser.

1.22 RESIDENTIAL ASSOCIATION: Cumberland Trails Condominium Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

1.23 TOWN: Town of Cumberland, Indiana.

1.24 TURNOVER DATE: The date on which anyone of the following shall first occur: (a) Thirty (30) days after Developer has conveyed 31 Dwelling Units to purchasers for value (being 75% of the maximum number of Dwelling Units which may be made subject to this Declaration); (b) The expiration of three (3) years from the date of the Recording of this Declaration; (c) The date designated in written notice from the

Developer to all of the Owners as being the Turnover Date.

1.25. UNDIVIDED INTEREST: The percentage of ownership interest in the Common Elements appurtenant to a Dwelling Unit as herein and hereafter allocated on Exhibit C hereto, as Exhibit C may be amended from time to time.

1.26 UNIT OWNERSHIP: A part of the Condominium Property consisting of one Dwelling Unit and its Undivided Interest.

1.27 VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Four.

ARTICLE TWO

Scope of Declaration and Certain Property Rights

2.01 REAL ESTATE SUBJECT TO DECLARATION: Developer, as the owner of fee simple title to the Parcel and Property, expressly intends to and, by Recording this Declaration, does hereby subject and submit the parcel and Property to the provisions of the Act and this Declaration. Nothing in this Declaration shall be construed to obligate the Developer to develop, subject to the Act and this Declaration, any portion of the Development Area other than those portions which are part of the Parcel. None of the covenants, conditions, restrictions, and easements contained in this Declaration shall burden any portion of the Development Area unless and until such portion is or becomes part of the Parcel and Property.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the Condominium Property, and their respective heirs, successors, personal representatives or assigns. Reference in any deed or conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

2.03 ENCROACHMENTS: In the event that, by reason of the construction, repair, reconstruction, settlement or shifting of the Condominium Property or any part thereof, (i) any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Dwelling Unit, or (ii) any part of any Dwelling Unit encroaches or shall hereafter encroach upon any part of any other Dwelling Unit or the Common Elements, then, in any such case, there shall be deemed to be an easement in favor of the Owners for the maintenance and use of any of the Common Elements which may encroach upon a Dwelling Unit and there shall be deemed to be an easement in favor of any Owner for the exclusive use of any part of his Dwelling Unit which shall encroach upon the Common Elements or any other Dwelling Unit; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful or negligent conduct of such Owner or his agent.

2.04 OWNERSHIP OF COMMON ELEMENTS: Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Owners. Each Dwelling Unit's corresponding percentage of ownership in the Common Elements (Undivided Interest) has been determined by Developer as required under the Act to be as set forth in Exhibit C attached hereto. Exhibit C may not be changed without unanimous written approval of all Owners and all First Mortgagees, except as hereinafter provided in Section 5.06 or 5.07, or as permitted under the Act. The Common Elements shall remain undivided and no Owner shall bring any action for partition.

2.05 OWNERS' RIGHTS TO USE THE COMMON ELEMENTS:

(a) Each Owner shall have the right to use the Common Elements (except the Limited Common Elements or portions occupied pursuant to leases, licenses, or concessions made by the Board) in common with all other Owners, as may be required for ingress and egress to and from his respective Dwelling Unit, and for such other purposes not prohibited hereunder.

(b) Each Owner shall have the right to the exclusive use and possession of the Exclusive Limited Common Elements which serve his Dwelling Unit. Each Owner shall have the right to the nonexclusive use, in common with other Owners, of the Limited Common Elements which serve his Dwelling and the Dwelling Units of such other Owners.

(c) The rights to use and possess the Common Elements, including the Limited Common Elements, as herein provided, shall extend to each Owner, and the agents, servants, tenants, and invites of each Owner and such rights and easements shall be

subject to and governed by the provisions of the Act, this Declaration, the By-Laws, and the reasonable rules and regulations of the Board.

(d) Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area, subject to rules and regulations adopted by the Residential Association.

2.06 LEASE OF COMMON ELEMENTS: The Board shall have the right and authority, subject to the provisions of this Declaration and the By-Laws, to grant licenses or concessions with regard to parts of the Common Elements (other than Limited Common Elements). The rental, fees and terms of any such lease, license or concession shall be determined by the Board and any and all proceeds therefrom shall be used to pay the Common Expenses and shall be taken into account in the preparation of the annual budget.

2.07 UTILITY AND ACCESS EASEMENTS: Each Owner of a Dwelling Unit, the Trustee, and the Developer shall have a non-exclusive easement for vehicular and pedestrian access over and across roadways and walkways from time to time located on the Condominium Property, including, without limitation, those roadways and walkways which provide access to public ways. All public and private utilities serving the Condominium Property are hereby granted the right to lay, construct, renew, operate, maintain conduits, cables, pipes, wires, transformers, switching to apparatus and other equipment, into and through the Condominium Property for the purpose of providing utility services to the Development Area. The County, the Town and any municipality or other governmental authority which has jurisdiction over the Development Area or which undertakes to provide services to the Development Area are hereby declared, granted and reserved access easements for ingress and egress to, over and across the Condominium Property for the purpose of providing any such services. The Owners from time to time of portions of the Development Area which are not part of the Condominium Property are hereby granted and reserved a perpetual, non-exclusive easement of access over and across the roads and streets located on the Common Elements.

2.08 ADDITIONAL EASEMENTS: In addition to the easements provided for herein, the Board, on behalf of all of the Owners, shall have the right and power (a) to grant such easements with respect to the Common Elements (except the Limited Common Elements) as the Board deems necessary and proper, including without limitation, access easements for emergency and service vehicles operated by any governmental authority or private enterprise and/or easements related to the installation and operation of a cable or satellite televisions system or other communication systems and/or (b) to cancel, alter, change or modify any easement which affects the

(b) The Owners of Dwelling Units in a particular Building shall be responsible for the payment of that portion, if any, of the bill which is allocable to the Dwelling Units in the Building where the Dwelling Units have not been separately taxed but where other Dwelling Units in the Condominium Property have been separately taxed. In such case the amount payable by each Owner shall be based on the relative Undivided Interests of the affected Dwelling Units; and

(c) Where the bill affects the Condominium Property as a whole or portions of the Common Elements and not Dwelling Units, then each Owner shall pay his proportionate share thereof in accordance with his Undivided Interest. Any amounts payable hereunder by an Owner of a Dwelling Unit shall, if so determined by the Board, be a charge hereunder payable under the provisions of Article Six. Upon the affirmative vote of Voting Members representing a majority of the votes in the Residential Association or the affirmative vote of two-thirds of the members of the Board, the Board, on behalf of all the Owners, shall have the authority to seek relief for the Owners from any such taxes, special assessments or charges, and any expenses incurred in connection therewith shall be Common Expenses.

2.12 LEASE OF DWELLING UNIT: Any Owner shall have the right to lease all (but not less than all) of his Dwelling Unit upon such terms and conditions as the Owner may deem advisable except, that no Dwelling Unit shall be leased for a term of less than twelve (12) months. Any such lease shall be in writing, a copy of which must be delivered to the Residential Association, and shall provide that the lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. The Board may adopt such rules and regulations applicable to the leasing of Dwelling Units as it deems advisable and necessary. Notwithstanding anything contained herein, the provisions of this Section and any rules or regulations adopted pursuant hereto by the Board shall not at any time apply to any Dwelling Units owned by the Developer.

2.13 PARKING GARAGE/SPACE: Each Unit contains one parking garage/space for each Dwelling Unit Each parking garage/space (a "Parking Garage/Space") is delineated on the Plat as part of the Unit, and is assigned a number or symbol which corresponds to the Dwelling Unit to which the Parking Garage/Space is a part.

Condominium Property and does not benefit an Owner, as the Board shall, in its discretion, determine. Without limiting the foregoing, until such time as the Developer no longer holds title to a portion of the Development Area, the Board shall grant such easements as the Developer may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements or portions of the Development Area which are not part of the Condominium Property or to provide owners of the Development Area with necessary utility services. Each Person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Unit Ownership, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Residential Association and duly Recorded.

2.09 BOARD'S RIGHT OF ENTRY: The Board or its agents, upon reasonable notice or, in the case of emergency, without notice, shall have the right to enter any Dwelling Unit, including any of the appurtenant Limited Common Elements, when necessary in exercise of its authority under Section 3.02, or in connection with any maintenance, repair and replacement for which the Board is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board, as a Common Expense.

2.10 SEPARATE MORTGAGES: Each Owner shall have the right, subject to the provisions herein, to make a separate mortgage or encumbrance or other lien on his respective Unit Ownership. No Owner shall have the right or authority to make or create, or to cause to be made or created, any mortgage or encumbrance or other lien on or affecting the Condominium Property or any plan thereof, except only to the extent of his Unit Ownership.

2.11 REAL ESTATE TAXES: Real estate taxes, special assessments, and any other special taxes or charges of the State of Indiana or any duly authorized subdivision or agency thereof, are to be separately taxed to each Owner for his Unit Ownership, as provided in the Act. In the event that for any year a tax bill is issued with respect to a portion of the Condominium Property other than on a Dwelling Unit by Dwelling Unit basis, then:

(a) The Developer shall be responsible for the payment of that portion, if any, of the bill which is allocable to the portions of the Development Area which are not part of the property;

ARTICLE THREE

Use, Occupancy and Maintenance of the Property

3.01 MAINTENANCE, REPAIR AND REPLACEMENT OF COMMON ELEMENTS:

- (a) Except as otherwise specifically provided in this Declaration, decorating, maintenance, repair and replacement of the Common Elements shall be furnished by the Board as part of the Common Expenses.
- (b) Maintenance, repairs and replacements to the Community Area shall be furnished by the Board as part of the Common Expenses.
- (c) With respect to a particular category or class of Limited Common Elements (other than those specified above and the Exclusive Limited Common Elements appurtenant to a Dwelling Unit), instead of furnishing the maintenance, repair or replacement of such category or class of Limited Common Elements as a Common Expense, the Board may, in its discretion, (i) require each Owner to furnish such services to the Limited Common Elements which are appurtenant to his Dwelling Unit at his own expense, or (ii) furnish such services to the Limited Common Elements but assess the cost thereof directly to the Owners of Dwelling Units benefitted thereby on the basis of Undivided Interests or in equal shares, whichever the Board feels, in its sole discretion, to be appropriate.

3.02 MAINTENANCE, REPAIR AND REPLACEMENT OF DWELLING UNIT AND EXCLUSIVE COMMON ELEMENTS:

- (a) Each Owner shall furnish and be responsible, at his expense, for all of the maintenance, repairs and replacements within his Dwelling Unit and the Exclusive Limited Common Elements and shall keep them in good condition and repair. The Board may, in its discretion, cause maintenance services to be performed within a Dwelling Unit or to the Exclusive Limited Common Elements appurtenant thereto upon the request of an Owner and may charge a reasonable fee for such services. Without limiting the foregoing, to the extent that insurance carried by the Residential Association covers damage to a Dwelling Unit or the Exclusive Limited Common Elements appurtenant thereto (including, without limitation, broken windows), the Residential Association shall make any insurance proceeds received by the Residential Association as a result of any such damage available to the Owner to pay for or reimburse the Owner for payment of the cost of repairing the damage.

(b) Whenever the Board shall determine, in its discretion, that any maintenance, repair, or replacement of any Dwelling Unit or the Exclusive Limited Common Elements or any Limited Common Elements the maintenance of which is the responsibility of the Owner is necessary to protect the Common Elements or any other portion of the Condominium Property (i) if such work is made necessary through the fault of the Owner, then the Board may direct the Owner thereof to perform such maintenance, repair, or replacement and pay the cost thereof, or (ii) if such work is made necessary through no fault of the Owner, then the Board may cause the work to be done and the cost thereof shall be a Common Expense. If an Owner fails or refuses to perform any such maintenance, repair, or replacement within a reasonable time after being so directed by the Board pursuant to the preceding sentence, then the Board may cause such maintenance, repair, or replacement to be performed at the expense of such Owner. The determination of whether or not the work is made necessary through the fault of the Owner shall be made by the Board and such determination shall be final and binding.

3.03 ADDITION, ALTERATIONS OR IMPROVEMENTS:

(a) The Board may authorize and charge as a Common Expense (or in the case of Limited Common Elements may charge the Owners benefited thereby) any additions, alterations, or improvements to the Common Elements. Subject to the provisions of Section 6.06, the cost of any such work to the Common Elements may be paid out of a special assessment.

(b) Without the prior written consent of the Board an Owner shall not (i) make any additions, alterations or improvements to any part of the Common Elements (other than the Exclusive Limited Common Elements appurtenant to his Dwelling Units) or (ii) make any additions, alterations or improvements to his Dwelling Unit or to the Exclusive Limited Common Elements appurtenant thereto where such work alters the structure of the Dwelling Unit, increases the cost of insurance required to be carried by the Board hereunder or is visible from outside the Dwelling Unit. The Board may (but shall not be required to) condition its Consent to the making of any such addition, alteration or improvement by an Owner (i) upon the owner's agreement that any addition, alteration or improvement will be substantially similar in quality of construction and design to any similar addition, alteration or improvement constructed by Developer and (ii) upon Owner's agreement either (A) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (B) to pay to the Residential Association from time to time the additional cost of maintenance and/or insurance as a result of the addition, alteration or improvement. If any such addition, alteration or improvement is made by an Owner without the prior written consent of the Board, then the Board may, in its discretion, take

any of the following actions:

(1) Require the Owner to remove the addition, alteration or improvement and restore the Condominium Property to its original condition, all at the Owner's expense; or

(2) If the Owner refuses or fails to properly perform the work required under (1), the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or

(3) Ratify the action taken by the Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

3.04 DAMAGE CAUSED BY OWNER: If, due to the act of or the neglect of a Resident of a Dwelling Unit, a household pet, guest or other occupant or invitee of such Resident, damage shall be caused to part of the Condominium Property and maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then the Owner of the Dwelling Unit in which such Resident resides shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Board, to the extent not covered by insurance, if any carried by the Residential Association, including, without limitation, the deductible amount under any applicable insurance policy.

3.05 USE RESTRICTIONS: Except as provided in Article Twelve, each Dwelling Unit shall be used only as a residence; provided, that, no Resident shall be precluded with respect to his Dwelling Unit, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein or (iii) handling his personal business or professional calls or correspondence therefrom.

3.06 MECHANIC'S LIENS: The Board may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Condominium Property or Common Elements, rather than against a particular Unit Ownership. When less than all the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs an expenses (including attorney's fees and expenses) incurred by reason of such lien.

3.07 USE AFFECTING INSURANCE: Nothing shall be done or kept in any Dwelling Unit or in the Common Elements which will increase the rate of insurance on

the Condominium Property or contents thereof, applicable for residential use, without prior written consent of the Board. No Owner shall permit anything to be done or kept in his Dwelling Unit or in the Common Elements which will result in the cancellation of insurance on the Condominium Property, or contents thereof, or which would be in violation of any law.

3.08 SIGNS: Except as provided in Article Eleven, no "For Sale", "For Rent" or any other sign of any kind or other form of solicitation or advertising or window display shall be maintained or permitted on the Condominium Property.

3.09 PETS: Pets, as approved by the Board, shall be allowed on the Property.

3.10 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to any part of the Condominium Property which would impair the structural integrity of any Building or structure located on the Condominium Property.

3.11 PROSCRIBED ACTIVITIES: No noxious or-offensive activity shall be carried on in the Condominium Property and nothing shall be done in the Condominium Property, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of the Dwelling Units. No Owner or Resident shall place or cause or permit to be placed in the vestibules, stairways and other Common Elements of a similar nature, any furniture, packages or objects of any kind. Such areas shall be used for no other purpose than normal transit through them.

3.12 NO UNSIGHTLY USES: No clothes, sheets, blankets, laundry of any kind, or other similar articles shall be hung out on any part of the Common Elements except as permitted by rules and regulations of the Board. The Condominium Property shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

3.13 RULES AND REGULATIONS: The use and enjoyment of the Condominium Property shall be subject to reasonable rules and regulations duly adopted by the Board from time to time; provided that prior to adoption of any such rules, there shall first be held a meeting of the Owners to discuss the proposed rules and all Owners are furnished with a copy of the proposed rule and notice of the meeting as required by the Act. Without limiting the foregoing, (i) the Board may adopt rule and regulations requiring Owners or tenants of Owners to post a deposit with the Board in a reasonable amount as determined by the Board to ensure that no damage is caused to the Condominium Property because of the Owner or his tenants moving in or out of the

Dwelling Unit; or (ii) the Board may levy a reasonable charge upon an Owner for a violation of the Declaration, the By-Laws or a rule or regulation, in accordance with the procedures set forth in Section 7.05.

ARTICLE FOUR
The Residential Association

4.01 THE RESIDENTIAL ASSOCIATION: Developer shall cause the Residential Association to be incorporated as a not-for-profit corporation. The Residential Association shall be the governing body for all of the Owners and for the administration and operation of the Buildings as provided in the Act, this Declaration and the By-laws. All agreements and determinations lawfully made by the Residential Association shall be deemed to be binding on all Owners and their respective successors and assigns.

4.02 MEMBERSHIP:

(a) There shall be only one class of membership in the Residential Association. The Owner of each Dwelling Unit shall be a member of the Residential Association. There shall be one membership per Unit Ownership. Membership shall be appurtenant to and may not be separated from ownership of a Dwelling Unit. Ownership of a Dwelling Unit shall be the sole qualification for membership. The Residential Association shall be given written notice of the change of ownership of a Dwelling Unit within ten (10) days after such change. ®

(b) One individual shall be designated as the "Voting Member" for each Unit Ownership. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners.

4.03 THE BOARD: From and after the Turnover Date, the Board shall consist of the number of individuals provided for in Section 5.01 of the By-Laws, each of whom shall be an Owner or a Voting Member. The Board shall be elected at each annual meeting of the Owners as provided in the By-Laws.

4.04 VOTING RIGHTS: Whenever a vote of the Owners of the Residential Association is required, at any meeting of such Owners or otherwise, such votes shall be cast by the Voting Members or their proxies; provided that a Resident who is a contract purchaser of a Dwelling Unit from a contract seller other than the Developer, shall have the right to vote for directors of the Residential Association after the Turnover Date unless such contract seller expressly retains such right in writing. Except as otherwise

specifically required under the Act, this Declaration or the Bylaws, each Voting Member shall have one vote for each Dwelling Unit which he represents.

4.05 MANAGING AGENT: The Residential Association may appoint a managing agent to assist in the conduct of the affairs of the Residential Association as provided in Article VIII herein.

4.06 DIRECTOR AND OFFICER LIABILITY : Neither the Directors nor officers of the Residential Association whether elected or designated by the Developer shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Residential Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and the officers on behalf of the Owners or the Residential Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim action, suit or proceeding, whether civil, administrative, or other, in which a director or officer may be involved by virtue of such person being or having been a director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as a director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as a director or officer.

ARTICLE FIVE

Insurance/Condemnation

5.01 FIRE INSURANCE: The Board shall have the authority to and shall obtain insurance for the Condominium Property against loss or damage by fire and such other hazards as may be required under the Act, as the Board may deem desirable, or as reasonably required by First Mortgagees, for the full insurable replacement cost of the Common Elements and the Dwelling Units. Premiums for such insurance shall be

Common Expenses. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Board as trustee for each of the Owners in accordance with their Undivided Interests as its interest may appear. All such policies of insurance (i) shall contain standard mortgage clause endorsements in favor of the First Mortgagees as their respective interests may appear, (ii) shall provide that the insurance, as to the interests of the Board, shall not be invalidated by any act or neglect of any Owner, (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, such option shall not be exercisable if the Owners elect to sell the Condominium Property or remove the Condominium Property from the provisions of the Act, (iv) to the extent possible, shall provide that such policy shall not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' written notice to the First Mortgagee of each Unit Ownership, and (v) shall contain waivers of subrogation with respect to the Residential Association and their directors, officers, employees and agents (including the managing agent), Owners, occupants of the Dwelling Unit, First Mortgagees, the Trustee, and the Developer and shall name all such parties as additional insured parties as their interests may appear.

5.02 INSURANCE TRUSTEE/USE OF PROCEEDS : The Board may engage the services of any bank or trust company authorized to do trust business in Indiana to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and this Declaration. The fees of such corporate trustee shall be Common Expenses. In the event of any loss in excess of \$100,000.00 in aggregate, the Board shall engage a corporate trustee as aforesaid. In the event of any loss resulting in the destruction of the major portion of one or more Dwelling Units, the Board shall engage a corporate trustee as aforesaid upon the written demand of the First Mortgagee or any Owner of any Dwelling Unit so destroyed. The rights of First Mortgagees under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act and this Declaration with respect to the application of insurance proceeds to the repair or reconstruction of the Dwelling Units or Common Elements. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of a release from the Board of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the board or the corporate

trustee.

5.03 OTHER INSURANCE: The Board shall also have the authority to and shall obtain the following insurance:

- (a) Insurance on the Buildings against all loss or damage from explosion of heating apparatus installed in, on or about said Buildings.
- (b) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in, on or about the Condominium Property or upon, in or about the streets, private drives and passageways and other areas adjoining the Condominium Property, with limits of liability of not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence.
- (c) Such workmen's compensation insurance as may be necessary to comply with applicable laws.
- (d) Employer's liability insurance.
- (e) Fidelity bond indemnifying the Residential Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Residential Association, the managing agent or of any other person handling the funds of the Residential Association, the Board or the Owners.
- (f) Directors and Officers liability insurance.
- (g) Such other insurance in such reasonable amounts as is required under the Act, the Board shall deem desirable, or may be required under the applicable requirements of the Federal National Mortgage Association.

All insurance obtained pursuant to this Section shall be in amounts not less than that required from time to time under the Act or under applicable requirements of the Federal National Mortgage Association or any successor thereto. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. To the extent possible, all of such policies shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Residential Association and First Mortgagees who specifically request such notice. The premiums for such insurance shall be Common Expenses.

5.04 OWNER'S RESPONSIBILITY: Each Owner shall obtain his own insurance on the contents of his own Dwelling Unit and furnishings and personal property therein, and his personal property stored elsewhere on the Condominium Property, and his personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided, and the Board shall have no obligation whatsoever to obtain any such insurance coverage on behalf of the Owners. Each Owner shall promptly report, in writing to the Board, any betterments or improvements to his Dwelling Unit without prior request from the Board. Unless otherwise specifically agreed to by the Board, the Owner shall be responsible for insuring any such betterments or improvements to his Dwelling Unit. The Board shall not be responsible for obtaining insurance on such betterments or improvements and shall not be obligated to apply any insurance proceeds from policies it is obligated to maintain hereunder to restore the affected dwelling Unit to a condition better than the condition existing prior to the making of such betterments or improvements.

5.05 WAIVER OF SUBROGATION: Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Residential Association, its directors and officers, the Developer, the manager and the managing agent if any, and their respective employees and agents, for damage to the Common Elements, the Dwelling Units, or to any personal property located in the Dwelling Units or Common Elements, used by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance.

5.06 REPAIR OR RECONSTRUCTION: 

(a) In the case of damage by fire or other disaster to a portion of the Condominium Property (a "Damaged Improvement") where the insurance proceeds are sufficient to repair or reconstruct the Damaged Improvement, then the proceeds shall be used by the Residential Association to repair or reconstruct the Damaged Improvement.

(b) In the case of damage by fire or other disaster to a portion of the Condominium Property where the insurance proceeds are insufficient to repair or reconstruct the Damaged Improvement as provided under the Act or the Damaged Improvement cannot be reconstructed as originally designed and built because of zoning, building or other applicable laws, ordinances or regulations, the following procedure shall be followed:

- (1) meeting of the Owner shall be held not later than the first to occur of (i) the expiration of thirty (30) days after the final adjustment of the insurance

claims or (ii) the expiration of ninety (90) days after the occurrence which caused the damage.

(2) At the meeting, the Board shall present a plan for the repair or reconstruction of the Damaged Improvement and an estimate of the cost of repair or reconstruction, together with an estimate of the amount thereof which must be raised by way of special assessment and a proposed schedule for the collection of a special assessment to pay the excess cost.

(3) A vote shall then be taken on the questions of whether or not the Damaged Improvement shall be repaired or reconstructed based on the information provided by the Board under (2) above, including the proposed special assessment. The Damaged Improvement shall be repaired or reconstructed and the proposed special assessment shall be levied only upon the affirmative vote of Voting Members representing at least three-fourths (3/4) of the votes cast.

(4) If the Voting Members do not vote to repair or reconstruct the Damaged Improvement at the meeting provided for in (1) above, then the Board may, at its discretion, call another meeting or meetings of the Owners to reconsider the question of whether or not the Damaged Improvement shall be repaired or reconstructed. If the Voting Members do not vote to repair or reconstruct the Damaged Improvement within 180 days after the occurrence which caused the damage, then the Board may (but shall not be obligated to) in its discretion Record a notice as permitted under the Act. (R)

(5) If(i) the Voting Members do not vote to repair or reconstruct the Damaged Improvement under Subsection (4) above, and (ii) the Board does not Record a notice as permitted under the Act, then the Board may, with the consent of Owners representing 75% of the Undivided Interests of Dwelling Units in such Building and First Mortgages representing 75% of the Dwelling Units (by number) subject to First Mortgages in the Building, amend this Declaration to withdraw the Building which includes the Damaged Improvement as permitted under the Act. If a Building is withdrawn, then the amendment shall provide that the portion of the Condominium Property which is so withdrawn shall be owned by the Owners of Dwelling Units in such withdrawn portion as tenants-in-common with each Owner's interest being determined based on the relative Undivided Interests of the Dwelling Units in the Building prior to withdrawal. The amendment shall reallocate the Undivided Interests of the remaining Dwelling Units. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Owner shall be

made to such Owner and his First Mortgage, as their interests may appear, on an equitable basis, determined by the Board, or as otherwise provided in the Act. From and after the effective date of the amendment referred to above in this paragraph, the Owner of a Dwelling Unit located in the Building which is withdrawn shall have no responsibility for the payment of assessments which would have been payable with respect to the Dwelling Unit if the amendment had not been Recorded.

(c) If the Damaged Improvement is repaired or reconstructed, it shall be done in a workmanlike manner and the Damaged Improvement, as repaired or reconstructed, shall be substantially similar in design and construction to the improvements on the Condominium Property as they existed prior to the damage, with any variation or modifications required to comply with applicable law.

(d) If the Damaged Improvement is not repaired or reconstructed, then the damaged portion of the Building shall be razed, or secured and otherwise maintained in conformance with the rules or standards adopted from time to time by the Board.

5.07 CONDEMNATION:

(a) In the case of a taking or condemnation by competent authority of any part of the Condominium Property, the Residential Association shall, if necessary, restore the improvements in the remaining portion of the Condominium Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards paid to the Residential Association shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either (i) applied to pay the Common Expenses or (ii) distributed to the remaining Owners and their respective First Mortgages, as their interests may appear, based on their current Undivided Interests. Each Owner appoints the Residential Association as attorney-in-fact for the purpose of representing him in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements or any part thereof.

(b) In the event that part or all of one or more Dwelling Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Act and the Court which has jurisdiction of the action shall adjust the Undivided Interests of the remaining Dwelling Units in a just an equitable manner and as provided under the Act, and if the Court fails to make such adjustment, such adjustment may be made by the Board. The President and

Secretary of the Residential Association shall execute and Record, an instrument on behalf of the Residential Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property and adjustments, if any, in the Undivided Interests as a result of an occurrence covered by this Section. From and after the effective date of the amendment referred to in the preceding sentence, the Owner of a Dwelling Unit which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the Undivided Interest, if any, allocated to the Dwelling Unit in the amendment.

ARTICLE SIX

Assessments

6.01 CREATION OF LIEN AND PERSONAL OBLIGATION : The Developer, for each Unit Ownership hereby covenants, and each Owner of a Unit Ownership by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be and is deemed to covenant and hereby agrees to pay to the Residential Association such assessments or other charges or payments as are levied pursuant to the provisions of this Declaration. Such assessments, or other charges or payments, together with interest thereon and costs of collection, if any, as herein provided, shall be a charge on the unit Ownership and shall be a continuing lien upon the Unit Ownership against which each such assessment is made. Each such assessment, or other charge or payment, together with such interests and costs, shall also be the personal obligation of the Owner of such Unit Ownership at the time when the assessment or other charge or payment is due.

6.02 PURPOSE OF ASSESSMENTS : The assessments levied by the Residential Association shall be exclusively for the purposes of promoting the recreation, health, safety, and welfare of members of the Residential Association, and to administer the affairs of the Residential Association, and to pay the Common Expenses.

6.03 ANNUAL ASSESSMENT : Each year at least sixty (60) days before the end of the Residential Association's fiscal year, and at least thirty (30) days before final adoption thereof, the Board shall furnish each Owner with a proposed budget for the ensuing fiscal year which shall show the following, with reasonable explanations and itemizations:

(a) The estimated Common Expenses with an allocation of portions thereof for the payment of real estate taxes, if any;

(b) The estimated amount, if any, to maintain adequate reserves for Common.

(c) The estimated net available cash receipts from sources other than assessments, including, without limitation, receipts from any leases, licenses or concessions;

(d) The amount of the "Annual Assessment" which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above, minus excess funds, if any, from the current year's operation;

(e) That portion of the Annual Assessment which shall be payable by the Owner with respect to his Dwelling Unit each month until the next Annual Assessment or revised Annual Assessment becomes effective, which monthly portion shall be equal to one-twelfth (1/12th) of the Annual Assessment multiplied by the Dwelling Unit's Undivided Interest.

6.04 PAYMENT OF ASSESSMENTS: On or before the first day of the fiscal year, and on or before the first day of each and every month thereafter until the effective date of the next Annual Assessment, each Owner of a Dwelling Unit shall pay to the Residential Association, or as it may direct, that portion of the Annual Assessment, which is payable by such Owner.

6.05 REVISED ASSESSMENT: If the Annual Assessment proves to exceed funds reasonably needed, then the Board may decrease the assessments payable under Section 6.03 as of the first day of a month by the giving of written notice thereof (together with a revised budget for the balance of the year and reasons for the decrease) not less than ten (10) days prior to the effective date of the decreased assessment. If an adopted budget requires assessment against the unit owners in any fiscal or calendar year exceeding 115% of the assessments for the preceding year, the board of managers, upon written petition by unit owners with 20 percent of the votes of the association filed within 14 days of the board action, shall call a meeting of the unit owners within 30 days of the date of filing of the petition to consider the budget; that unless a majority of the votes of the unit owners are cast at the meeting to reject the budget, it is ratified, whether or not a quorum is present; that in determining whether assessments exceed 115% of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, and anticipated expenses by the association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

6.06 SPECIAL ASSESSMENT: The Board may levy a special assessment (i) to

pay (or build up reserves to pay) extraordinary expenses incurred (or to be incurred) by the Residential Association for a specific purpose including, without limitation, to make major repairs, additions, alterations or improvements to the Common Elements, or (ii) to cover an unanticipated deficit under the current or prior year's budget. Any special assessment, which will require the aggregate payment with respect to a Dwelling Unit of the greater of (a) \$300 or (b) five times the most recent monthly assessment shall be subject to approval by the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast at a meeting of the Owners duly called for the purpose of approving the assessment. Each Owner shall be responsible for the payment of the amount of the special assessment multiplied by his Dwelling Unit's Undivided Interest. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the amount and reasons therefor, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an anticipated deficit under the current or prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.07 ANNUAL REPORT: Within a reasonable time after the close of the Residential Association's fiscal year, the Board shall furnish each Owner with an itemized account of the Common Expenses for such fiscal year actually incurred or paid, together with an indication of which portions of the common Expenses for such fiscal year were incurred or paid for capital expenditures or repairs or the payments of real estate taxes, if any, and with a tabulation of the amounts collected for the Annual Assessment and showing the net excess or deficit of income over expenditures, plus reserves.

6.08 CAPITAL RESERVE: The Residential Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Common Elements, including a reserve fund for replacements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Elements and equipment owned by the Residential Association as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Elements or the purchase of equipment to be used by the Residential Association in connection with its duties hereunder. The Capital Reserve may be built up by special assessment or out of the Annual Assessment as provided in the budget. Each budget shall disclose that percentage of the Annual Assessment which shall be added to the Capital Reserve and shall also disclose (i) which portion thereof is for capital expenditures with respect to the Common Elements and (ii) which portion thereof is for capital expenditures with respect to property owned or to be owned by the Residential

Association. Special accounts set up for portions of the Capital Reserve to be used to make capital expenditures with respect to the Common Elements shall be held by the Residential Association as agent and trustee for the Owners and such accounts shall be deemed to have been funded by capital contributions to the Residential Association by the Owners.

6.09 INITIAL CAPITAL CONTRIBUTION : Upon the closing of the sale of each Dwelling Unit by the Developer to a purchaser for value, the purchasing Owner shall (i) make a capital contribution to the Residential Association in an amount equal to one-fourth (1/4) of the current year's Annual Assessment for that Dwelling Unit, which amount shall be held and used by the Residential Association for its working capital needs, and (ii) deposit with the Residential Association an amount equal to the estimated portion of the next annual hazard insurance premium allocable to the Dwelling Unit, as determined by the Board in its reasonable discretion.

6.10 NONPAYMENT OF ASSESSMENTS : Any assessments or other charges or payments which an Owner is required to make or is liable for hereunder which are not paid when due shall be deemed delinquent. If an assessment or other charge or payment is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the contract rate permitted in Indiana, but not to exceed eighteen percent (18%) per annum, and the Board (i) may bring an action against the Owner personally obligated to pay the same, together with interest, costs and reasonable attorneys' fees of any such action, which shall be added to the amount of such assessment other charge or payment and shall be included in any judgment rendered in such action and (ii) may enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may in its discretion charge reasonable late fees for the late payment of assessments or other charges. No Owner may waive or otherwise escape liability for the assessments or other charges or payment provided for herein by nonuse, abandonment or transfer of his Dwelling Unit.

6.11 RESIDENTIAL ASSOCIATION'S LIEN SUBORDINATED TO

MORTGAGES : The lien on each Unit Ownership provided for in Section 6.01 for assessments or other charges or payment shall be subordinate to the lien of any First Mortgage on the Unit Ownership Recorded prior to the date that any such assessments or other charges or payments become due. Except as hereinafter provided, the lien provided for in Section 6.01 shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure of a First Mortgage, such transfer of title shall to the extent permitted by law extinguish the lien for any assessments or other

charges or payments under Section 6.01 which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Dwelling Unit, whichever comes first. However, the transferee of a Unit Ownership shall be liable for his share of any assessments or other charges or payments with respect to which a lien against his Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Owners pursuant to a subsequently adopted annual, revised or special assessment, and nonpayment thereof shall result in a lien against the transferee's Unit Ownership as provided in Section 6.01. If for any reason the Owner of a Dwelling Unit is permitted to remain in possession of his Dwelling Unit during the pendency of a foreclosure action with respect to the Dwelling Unit, the Owner shall be required to pay a reasonable rental for such right and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect such rental.

6.12 STATEMENT OF ACCOUNT: Upon seven (7) days notice to the Board and the payment of a reasonable fee, if any, which may be set by the Board, any Owner shall be furnished with a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from the Owner as of the date of the statement. The statement shall be executed by a duly authorized officer or agent of the Residential Association and shall be binding on the Residential Association.

6.13 Taxes: Each dwelling unit shall be responsible for its pro rata share of real property taxes assessed by the County Assessor or any other governmental agencies against the Common Areas/Community Area or Common Elements as well as real property taxes assessed directly against the dwelling unit itself.

ARTICLE SEVEN

Remedies for Breach or Violation

7.01 SELF-HELP BY BOARD: Subject to the provisions of Section 7.05, in the event of a violation by an Owner of the provisions, covenants or restrictions of the Act, this Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, the Board, upon not less than ten (10) days prior written notice, shall have the right to enter upon that part of the Condominium Property where the violation or breach exists and summarily abate, remove or do whatever else may be necessary to correct such violation or breach; provided, however, that where the violation or breach involves an improvement located within the boundaries of a Dwelling Unit, judicial proceedings shall be instituted before any items of construction can be altered or demolished. Any and all expenses in connection with the exercise of the right provided by this section shall be charged to and

assessed against the violating Owner.

7.02 INVOLUNTARY SALE: Subject to the provisions of Section 7.05, if any Owner (either by his own conduct or by the conduct of any Resident) shall violate any of the covenants or restrictions or provisions of this Declaration, the By-Laws, or the rules or regulations adopted by the Board, and such violation shall not be cured within thirty (30) days after notice in writing from the Board, or shall reoccur more than once thereafter, then the Board shall have the power to issue to said defaulting Owner a 10-day notice in writing to terminate the rights of said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Dwelling Unit, and thereupon an action may be filed by the Board against said defaulting Owner for a decree declaring, the termination of said defaulting Owner's right to occupy, use or control the Dwelling Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Condominium Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and other terms as the Court shall determine equitable. The proceeds of any such judicial sale shall first be paid to discharge Court costs, Court reporter charges, reasonable attorney's fees and all other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Owner in the decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Dwelling Unit and to immediate possession of the Dwelling Unit sold and may apply to the Court for a writ of assessment for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the Dwelling Unit so purchased subject to this Declaration.

7.03 OTHER REMEDIES OF THE BOARD: In addition to or in conjunction with the remedies set forth above, in the event of a violation by an Owner of the Act, this Declaration, the By-laws, or rules and regulations of the Board, the Board may levy reasonable fines or the board or its agents shall have the right to bring an action at law or in equity against the Owner and/or others as permitted by law including, without limitation, (i) to foreclose a lien against the Unit Ownership, (ii) for damages, injunctive relief, or specific performance, (iii) for judgment or for the payment of money and the collection thereof, (iv) for any combination of the remedies set forth in this Article or (v) for any other relief which the Board may deem necessary or appropriate. Any and all rights and remedies provided for in this Article may be exercised at any time and from time to time cumulatively or otherwise by the Board in its discretion. The failure of the Board to enforce any provisions of this Declaration, the By-Laws or rules and regulations of the Board shall in no event be deemed a waiver of the right to do so thereafter.

7.04 ENFORCEMENT BY THE BOARD: Prior to the imposition of any fine and concurrently with the sending of the initial notices described in Section 7.01 and 7.02, the Board shall notify the Owner or Resident, as the case may be, in writing of the violation of the role or regulations and the Board's proposed remedy. Any Owner or Resident who receives such notice may, within three (3) days after receipt of such notice, demand a hearing before the Board or its authorized committee. At such hearing a member of the Board shall present to the Owner or Resident the grounds for the notice and the Owner or Resident shall have an opportunity to challenge such grounds and to present any evidence on his behalf subject to such reasonable roles of procedure as may be established by the Board or its authorized committee, which roles adhere to the generally accepted standards of due process. If the Owner or Resident demands a hearing as herein provided, such hearing shall be held within four (4) days after the Board receives the demand and no action shall be taken by the Board until the hearing has been held and notice of the decision of the Board or its authorized committee and the terms thereof has been delivered to the Owner or Resident. The decision of the Board or its authorized committee shall be rendered within three (3) days after the hearing and such decision shall be final and binding upon the parties.

7.05 COSTS AND EXPENSES: All expenses incurred by the Board in connection with the enforcement of the provisions of this Declaration or in connection with the exercise of its rights and remedies under this Article, including without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the contract rate of interest then permitted in Indiana until paid but not to exceed eighteen percent (18%) per annum, shall be charged to and assessed against the defaulting Owner, and the Residential Association shall have a lien for all the same upon such Owner's Unit Ownership, as provided in Section 6.01.

7.06 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the roles and regulations adopted hereunder may be by any proceeding at law or inequity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Unit Ownership to enforce any lien created hereunder.

ARTICLE EIGHT

Managing Agent

8.01 APPOINTMENT OF MANAGING AGENT: The Residential Association may appoint a Managing Agent to assist the Residential Association in conducting the affairs of the Residential Association.

8.02 SERVICES FURNISHED BY MANAGING AGENT : Unless and until

otherwise provided in a resolution of the Residential Association, the Residential Association may appoint a managing agent with the authority and power to provide for the benefit of the Residential Association, certain management services normally provided by a managing agent, including, without limitation, the following:

- (i) collect all assessments due or to become due to the Residential Association and prepare checks (which shall be executed by persons designated by the Board) to pay Common Expenses;
- (ii) render monthly to the Residential Association a detailed written statement specifying all receipts and disbursements during the preceding month;
- (iii) assist the Residential Association in the preparation of an annual budget and annual report for the Residential Association;
- (iv) hire, supervise, and discharge all engineers, janitors and other employees who perform work for which the Residential Association is responsible;
- (v) furnish all necessary decorating, maintenance, repairs and replacements to the Condominium Property for which the Residential Association is responsible;
- (vi) purchase all normal operating supplies and enter into any necessary service contracts on behalf of the Residential Association;
- (vii) procure all insurance which the Residential Association is authorized or obligated to obtain under the terms hereof;
- (viii) assist the Residential Association in the preparation and implementation of appropriate rules and regulations; and
- (ix) purchase other goods and services required for the proper administration, operation, maintenance, repair and replacement of the property administered and operated by the Residential Association.

The Residential Association shall either pay directly or reimburse the Managing Agent for any costs or expenses (including salaries and overhead) incurred in furnishing such services or in procuring other goods and services on behalf of the Residential Association. Any such payment or reimbursement shall be a Common Expense hereunder.

The Managing Agent may be the Developer, or any entity in which the Developer has an interest.

ARTICLE NINE Amendments

9.01 SPECIAL AMENDMENT: Developer and/or Trustee reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee First Mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct errors in this Declaration or any Exhibit thereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer or Trustee to vote in favor of, make, execute and record Special Amendments. The right of the Developer or Trustee to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Trustee or Developer no longer holds or controls title to a portion of the Development Area.

9.02 AMENDMENT BY OWNERS: Subject to the provisions of Section 9.01 and 11.01 and Article Eleven, and except as otherwise provided in Sections 5.06 and 5.07 and the Act, the provisions of this Declaration may be amended, modified, enlarged or otherwise changed in whole or in part by the affirmative vote of Voting Members (either in person or by proxy), or by an instrument executed by Owners, representing at least 75% of the Undivided Interests; except that (i) the provisions relating to the rights of Developer or Trustee may be amended only upon the written consent of the Developer, (ii) the right of an Owner to lease his Dwelling Unit as provided for in Section 2.12 shall not be altered or amended without the consent of all of the Owners, and (iii) the provisions of Article Eleven and the provisions of this Article may be amended only with the written consent of all Owners and all First Mortgagees. No

amendment shall become effective until Recorded.

ARTICLE TEN
Rights of First Mortgagees

10.01 NOTICE TO FIRST MORTGAGEEES: Each Owner shall notify the Residential Association of the name and address of his First Mortgagee or its servicing agent, if any, and shall promptly notify the Residential Association of any change in such information. The Residential Association shall maintain a record of such information with respect to all Dwelling Units. Each First Mortgagee shall have the right to examine the books and records of the Residential Association at any reasonable time and to have an audited statement of the Residential Association's operations prepared for a fiscal year at its own expense. Upon the specific written request of a First Mortgagee to the Board, the First Mortgagee shall receive some or all of the following as designated in the request:

- (a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Residential Association to the Owner of the Dwelling Unit covered by the First Mortgagee's First Mortgage.
- (b) Any audited or unaudited financial statements of the Residential Association which are prepared for the Residential Association and distributed to the Owners;
- (c) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;
- (d) Notice of any proposed action which would require the consent of a specified percentage of First Mortgagees pursuant to Section 10.02;
- (e) Notice of the decision of the Owners to make any material amendment to this Declaration, the By-Laws, or the Articles of Incorporation of the Residential Association;
- (f) Notice of substantial damage to or destruction of any Dwelling Unit (in excess of \$1,000) or any plan of the Common Elements (in excess of \$10,000);
- (g) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Condominium Property;
- (h) Notice of any default of the Owner of the Dwelling Unit which is subject to the First Mortgagee's First Mortgage, where such default is not cured by the Owner

within thirty (30) days after the giving of notice by the Residential Association to the Owner of the existence of the default;

(i) The right to be treated as an "Eligible Mortgagee" for purpose of Section 11.02 below; or

(j) Copies of any written notice received by the Association of lapse, cancellation or material change of any insurance policy or fidelity bond carried by the Association.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Residential Association. Failure of the Residential Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Residential Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees of the same Unit Ownership, the Residential Association shall honor the most recent request received.

10.02. CONSENT OF ELIGIBLE MORTGAGEES:

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of First Mortgagees holding in the aggregate Eligible Mortgages on at least two-thirds (2/3) of the Unit Ownerships (by number) which are subject to First Mortgages held by First Mortgagees which specifically request to be treated as "Eligible Mortgagees" under Section 10.01 (i) above will be required for the Residential Association to do or permit to be done any of the following:

(1) Adoption of an amendment to this Declaration which changes or adds to provisions of the Declaration relating to (i) voting rights; (ii) assessments, assessment liens, or the priority of assessment liens; (iii) reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (vi) redefinition of any Dwelling Unit boundaries; (vii) convertibility of Dwelling Units into Common Elements or Common Elements into Dwelling Units; (viii) insurance of fidelity bond requirements; (ix) leasing of Dwelling Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his Dwelling Unit;

(2) The abandonment or termination of the Condominium;

- (3) The partition or subdivision of a Dwelling Unit;
- (4) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements, (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Condominium Property and except for the encumbrance, sale or transfer of an Undivided Interest in connection with the encumbrance, sale or transfer of a Unit Ownership);
- (5) The sale of the Condominium Property;
- (6) The removal of a portion of the Condominium Property from the provisions of the Act and this Declaration;
- (7) Restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than as specified in this Declaration or the use of hazard insurance proceeds for losses to the Condominium Property (whether to Dwelling Units or to the Common Elements) for other than the repair, replacement, or reconstruction of the damaged portion of the Condominium Property.
- (8) Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the Eligible Mortgagee within thirty (30) days after making the request for consent by certified or registered mail, return receipt requested.

10.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS : In the event of (i) any distribution of any insurance proceeds hereunder as a result of substantial damage to, or destruction of, any part of the Condominium Property or (ii) any distribution of the proceeds of any award or settlement as a result of the condemnation or eminent domain proceedings with respect to any part of the Condominium Property, any such distribution shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the First Mortgagee of a Dwelling Unit with respect to any such distribution to or with respect to such Dwelling Unit, provided that nothing in this Section shall be construed to deny to the Residential Association the right to apply any such proceeds to repair or replace damaged portions of the Condominium Property or to restore what remains of the Condominium Property after condemnation or taking by eminent domain of a part of the Condominium Property.

ARTICLE ELEVEN
Developer's Reserved Rights

11.01 IN GENERAL: In addition to any rights or powers reserved or granted to the Developer under the Act, this Declaration or the By-Laws, the Developer shall have the rights and powers set forth in this Article. In the event of a conflict between the provisions of this Article and any other provisions of this Declaration or the By-Laws, the provisions of this Article shall govern. Except as otherwise provided in this Article, the rights of the Developer provided in this Article reserved or granted shall terminate at such time as the Developer is no longer vested with or in control of title to any portion of the Development Area.

11.02 PROMOTIONAL EFFORTS: Developer shall have the right, in its discretion, to maintain on the Condominium Property model Dwelling Units, sales, leasing, management, and/or administrative offices (which may be located in a Dwelling Unit), displays, signs and other forms of advertising and, to the extent not prohibited by law, to come upon any portion of the Condominium Property for the purpose of showing the Condominium Property to prospective purchasers or lessees of Dwelling Units, all without the payment of any fee or charge whatsoever other than the assessments payable by the Developer with respect to Dwelling Units owned by the Developer. The Developer shall each have a non-exclusive access easement over and across the roads and walkways located on the Condominium Property for ingress and egress to and from those portions of the Development Area which have not been made subject to the Act and this Declaration in order to exercise the rights reserved under this Article.

11.03 CONSTRUCTION: Developer, its agents and contractors shall have the right to come upon the Condominium Property to construct improvements thereon and to make alterations, repairs or improvements to the Condominium Property or the portions of the Development Area not made part of the Parcel and shall have the right to store equipment and materials used in connection with such work on the Condominium Property or that portions of the Development Area which have not been made part of the parcel without payment of any fee or charge whatsoever.

11.04 CONTROL OF BOARD: Until the initial meeting of the Owners (which shall occur no later than thirty (30) days after the Turnover Date) and the election of the initial Board as provided for in the By-Laws, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act, this Declaration or the By-Laws shall be held and performed by the Developer. The Developer may hold and perform such rights and obligations through the Board which, prior to the Turnover Date, shall consist of three individuals designated by the Developer from time to time.

Prior to the Turnover Date the Developer may appoint from among the Owners three non-voting counselors to the Board who shall serve at the discretion of the Developer.

ARTICLE TWELVE

Town Rights

12.01 IN GENERAL: In addition to any rights, powers or easements granted to the Town elsewhere in this Declaration, the Town shall have the rights, powers, and easements set forth in this Article. Notwithstanding any other provision of this Declaration, no part of this article may be amended without the prior approval of such amendment by the Town.

12.02 ENFORCEMENT: The Town is hereby granted the right, but not the obligation, to enforce covenants and obligations of the Residential Association or the Owners. If the Residential Association or one or more Owners fail to comply with any such covenants and obligations, the Town shall have the right (but shall not be obligated) to give notice to the Residential Association or the offending Owner or Owners of its, his, or their failure to perform its, his, or their obligations. If such notice is given and the Residential Association or the offending Owner or Owners do not perform to the satisfaction of the Town within thirty (30) days after the giving of such notice, then the Town may (but shall not be obligated to) enter upon the Property and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Town. The Residential Association or the offending Owner or Owners shall, upon demand, reimburse the Town for the reasonable cost of such work and if payment is not made within thirty (30) days after demand, then the amount due shall become a lien on the property and the offending Owner or Owners or, in the case of the Residential Association, the property of the Residential Association; provided, however, that such lien shall be subordinate to the lien of any First Mortgage on a Unit Ownership Recorded prior to the date on which any such cost becomes a lien against the Unit Ownership as provided above.

12.03 MAINTENANCE: The Residential Association shall maintain the Common Elements in compliance with all applicable laws and ordinances of the City and all governmental bodies having jurisdiction over the Property, as such laws and ordinances may be amended and enforced from time to time.

ARTICLE THIRTEEN
Miscellaneous

13.01 SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions and reservations, by legislation, judgment or court order shall not affect any liens, charges, rights, benefits and privileges and other provisions of this Declaration, which shall remain in full force and effect.

13.02 NOTICES: Any notice required to be sent to any Owner 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 Owner as it appears on the records of the Residential Association at the time of such mailing, or upon personal delivery to the Owner's Dwelling Unit.

13.03 CAPTIONS/CONFLICTS: The Article and Section headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between the statements made in the recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions contained in the body of this Declaration shall govern. In the event there are any conflict between the statements made in the recitals to this Declaration and the provisions contained in Indiana Statute, the provisions contained in Indiana Statute shall govern.

13.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of a survivor of the now living lawful descendants of the President of the United States at the time of Recording of this Declaration.

13.05 TITLE HOLDING LAND TRUST: In the event title to any Unit Ownership is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all assessments, charges or payments hereunder and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit Ownership. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in

whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Unit Ownership.

13.06 ASSIGNMENT BY THE DEVELOPER: All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable or transferable. Upon any exercise of rights by the holder of said mortgage, pledge, assignment or transfer by reason of a default thereunder to anyone or more of such holders, its nominee or designee, any party appointed pursuant to mortgage, pledge, assignment or transfer and any successor or assign by foreclosure or deed-in-lieu of foreclosure or otherwise shall from time to time hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein. No party exercising rights as Developer hereunder shall have or incur any liability for the acts of any other party who previously exercised or subsequently shall exercise such rights.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed.

DATED: March 18⁴, 2008 C & H CONSTRUCTION LLC

By: 

ATTEST:

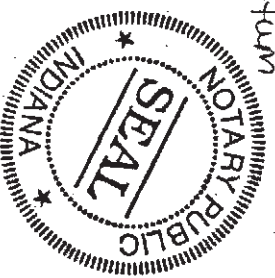
BY:  CHICAGO TITLE

STATE OF INDIANA)
) SS
COUNTY OF HANCOCK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John Hunzinger as its President, and as its respectively of CH Construction LLC, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 18th day of March, 2004.

County of Residence: Hancock
My Commission Expires: 9/14/08



Pamela Chittum
NOTARY PUBLIC
Pamela Chittum

THIS INSTRUMENT PREPARED BY AND RETURN TO: ®

Bruce A. Boje, Attorney at Law
RICHARDS, BOJE, PICKERING, BENNER & BECKER
1312 Maple Avenue
P.O. Box 2169
Noblesville, IN 46061
Telephone # (317) 773-4400
Fax# (317) 776-6031

CHICAGO TITLE

**EXHIBIT "B" TO
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
CUMBERLAND TRAILS CONDOMINIUMS**

Plat of Survey
(See attached)



Hancock County Recorder

CHICAGO TITLE

SCANNED
Hancock County Recorder

EXHIBIT " A " TO

DECLARATION OF CONDOMINIUM OWNERSHIP FOR
CUMBERLAND TRAILS CONDOMINIUMS

The Parcel

PLANNED UNIT DEVELOPMENT PHASE 2

A part of the Southwest Quarter and a part of the Southeast Quarter of Section 35, Township 16 North, Range 5 East in Buck Creek Township, Hancock County, Indiana, said part being more particularly described as follows:

Commencing at a Harrison Monument found marking the Northwest corner of said Southwest Quarter; thence South 00 degrees 16 minutes 39 seconds East (assumed bearing) along the West line of said Quarter Section 1188.00 feet to the Southwest corner of an 88 acre tract of land per Instrument #75-1198 in the Office of the Recorder of Hancock County, Indiana (the next four calls are along the boundaries of said 88 acre tract); North 89 degrees 54 minutes 05 seconds East 1518.00 feet; North 04 degrees 22 minutes 52 seconds East 338.25 feet; North 89 degrees 54 minutes 05 seconds East 15.05 feet to the centerline of Buck Creek Road and being the POINT OF BEGINNING of this description; thence North 04 degrees 22 minutes 52 seconds East along said centerline 575.76 feet to the northern line of a transmission line easement to IP&L recorded as instrument #70-0478 in the Office of the Recorder of Hancock County, Indiana; thence North 78 degrees 47 minutes 07 seconds East along said northern line 1058.51 feet; thence South 14 degrees 55 minutes 23 seconds West 794.97 feet to the North line of Cumberland Village, recorded as Instrument #89-2946 in the Office of the Recorder of Hancock County, Indiana; thence South 89 degrees 13 minutes 49 seconds West along the said North line 877.64 feet to the point of beginning. Containing 14.448 acres, more or less.

Subject, however, to all legal highways, rights of way, easements and restrictions of record.

EMMA

**EXHIBIT "C" TO
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
CUMBERLAND TRAILS CONDOMINIUMS**

Undivided Interests

Dwelling

Undivided

Unit No.

Model

Interest

Lot One

- 1
- 2
- 3
- 4
- 5



CHICAGO TITLE

SCANNED

Hancock County Recorder

SCANNED

Hancock County Recorder

**EXHIBIT "D" TO
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
CUMBERLAND TRAILS CONDOMINIUMS**

The By-Laws of
Cumberland Trails
Condominium Association
an Indiana Not-For-Profit Corporation

ARTICLE I

NAME OF CORPORATION

The name of this corporation is **CUMBERLAND TRAILS CONDOMINIUM ASSOCIATION, INC.**, a condominium association.

ARTICLE II

PURPOSE AND POWERS

2.01 PURPOSES: The purposes of this Residential Association are to act on behalf of its members collectively, as their governing body for civic functions and other purposes, with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property and for the promotion of the health, safety and welfare of the members of the Residential Association, all on a not-for-profit basis. These By laws are attached as Exhibit E to the Declaration of Condominium Ownership for ("Declaration"). All terms used herein shall have the meanings set forth in the Declaration.

2.02 POWERS: The Residential Association shall have and exercise all powers as are now or may hereafter be granted by Indiana Statute, the Act, the Declaration and these By-Laws.

2.03 PERSONAL APPLICATION: All present or future Owners, tenants, future tenants, and their agents and employees, and any other person that might use the facilities of the Condominium Property in any manner, shall be subject to the provisions of the Declaration and these By-Laws. The acquisition or rental of a Dwelling Unit or the act of occupancy of a Dwelling Unit will signify that the Declaration and these By-Laws are

accepted, ratified and will be complied with.

ARTICLE III OFFICES

3.01 REGISTERED OFFICE: The Residential Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Indiana as the Board may from time to time determine.

3.02 PRINCIPAL OFFICE: The Residential Association's principal office shall be maintained on the Development Area or at the Office of the managing agent engaged by the Residential Association.

ARTICLE IV MEETINGS OF MEMBERS

4.01 VOTING RIGHTS: The Residential Association shall have one class of membership. There shall be one individual with respect to each Dwelling Unit who shall be entitled to vote at any meeting of the Owner (the "Voting Member"). If the Owner of a Dwelling Unit is one individual then such individual shall be the Voting Member. If the Record ownership of a Dwelling Unit shall be in more than one individual or if the Owner is a trustee, corporation, partnership or other legal entity, then the voting Member shall be designated by the Owner or Owners in writing to the Board, and if in the case of multiple individual Owners no designation is given, then the Board may, at its election, recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit. Any or all Owners may be present at any meeting of the Owners, but the voting rights shall be vested exclusively in the Voting Members; provided, however, that a Voting Member may vote either in person or by proxy executed in writing by the Voting Member or his duly authorized attorney-in-fact and filed with the Secretary before the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. Each Voting Member shall have one vote for each Dwelling Unit which he represents.

4.02 PLACE OF MEETING: QUORUM: Meetings of the Owners shall be held on the Condominium Property or at such other place in the County in which the

Condominium Property is located and convenient to the Owners as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in Roberts Rules of Order, as from time to time published.

Voting Members holding twenty percent (20%) of the votes, represented in person or by proxy, shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the Voting Members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the Voting Members, unless a greater proportion is required by the Act, the Declaration or these By Laws. The affirmative vote of 75% of the votes entitled to be cast shall be required for the following action: (a) merger or consolidation of the Residential Association; and (b) sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the property and assets of the Residential Association. The affirmative vote of 75% of the votes entitled to be cast shall be required for the purchase or sale of land or of Dwelling Units on behalf of all Owners.

4.03 ANNUAL MEETINGS: The initial meeting of the Owners shall be held upon not less than twenty-one (21) days' written notice given by the Developer. If not called earlier by the Developer, the initial meeting of the Owners shall be held not more than thirty (30) days after the Turnover Date. Thereafter there shall be an annual meeting of the Owners within thirty (30) days from the anniversary date of the initial annual meeting at such time and on such date designated by the Board.

4.04 SPECIAL MEETINGS: Special meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by the President, a majority of the Board or by Voting Members representing at least twenty percent (20%) of the votes.

4.05 NOTICE OF MEMBERSHIP MEETINGS: Written notice of any membership meeting shall be mailed or personally delivered and posted conspicuously on the Condominium Property, giving Owners not less than ten (10) nor more than thirty (30) days notice of the time, place and purpose of the meeting.

ARTICLE V
BOARD OF DIRECTORS

5.01 IN GENERAL : The affairs of the Residential Association and the direction and administration of the Condominium Property shall be vested in the Board, which (after the Turnover Date) shall consist of five (5) persons ("Directors"). The Board shall have all of the powers granted to it under the Act, the Declaration, these By-Laws and Indiana Statute.

5.02 DEVELOPER DESIGNATED BOARDS : Anything herein to the contrary notwithstanding, until the first meeting of the Owners after the Turnover Date, the Board shall consist of three (3) individuals from time to time designated by the Developer. Such individuals may, but need not, be Owners and shall serve at the discretion of the Developer.

5.03 BOARDS AFTER TURNOVER DATE : At the first meeting of the Owners (which shall be held no later than thirty (30) days after the Turnover date) the Voting Members shall elect the initial Board (as provided for in the Act) in the manner hereinafter provided to replace the Developer designated Board established under Section 5.02. From and after such meeting, each member of the Board shall be an Owner or a voting Member, or both. Within sixty (60) days after the election of a majority of the Board other than those designated by the Developer, the Developer shall deliver to the Board the following documents and others as required by the Act:

- (a) Original copies of the Declaration, these By-Laws, the Residential Association's Articles of Incorporation and the Residential Association's minute book.
- (b) An accounting of all receipts and expenditures made or received on behalf of the Residential Association by the Developer designated Boards.
- (c) All Residential Association funds and bank accounts.
- (d) A schedule of all personal property, equipment and fixtures belonging to the Residential Association including documents transferring the property to the Residential

Association.

5.04 ELECTION: At each election for members of the Board, each Voting Member for each Dwelling Unit which he represents shall be entitled to the number of votes equal to the number of Directors to be elected and cumulative voting shall be permitted; provided that a Resident who is a contract purchaser of a Dwelling Unit from a contract seller other than the Developer shall have the right to vote for Directors after the Turnover Date unless such contract seller expressly retains such right in writing. At the initial meeting of the Owners, a full Board of Directors shall be elected, three (3) of whom shall serve a two (2) year term, and two (2) of whom shall serve a one (1) year term. The three (3) candidates receiving the highest number of votes shall be elected to serve a two (2) year term, and the two (2) candidates receiving the next highest number of votes shall be elected to serve a one (1) year term. Thereafter all Directors shall serve two (2) year terms. Each Director shall serve until his term expires or is terminated or until his successor shall have been elected and qualified. A Director may succeed himself in office.

5.05 ANNUAL MEETINGS: The Board shall hold an annual meeting within ten (10) days after the annual meeting of the Owners at such place as shall be fixed by the Directors at the annual meeting of the Owners.

5.06 REGULAR MEETINGS: Regular meetings of the board shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the Directors, provided that from and after the Turnover Date, not less than four such meetings shall be held during each fiscal year.

5.07 SPECIAL MEETINGS: Special meetings of the Board may be called by the President or by at least one-third (1/3) of the Directors then serving.

5.08 NOTICE OF BOARD MEETINGS: Notice of each meeting of the Board shall be mailed or personally delivered to each Director at least forty-eight (48) hours prior to the meeting and notice of any meeting of the Board concerning the adoption of the proposed annual budget or any increase or establishment of an assessment shall be given to each Owner in the same manner as provided in Section 4.05 of these By-Laws, unless a written waiver of such notice is signed by the person or persons entitled to such

notice before the meeting is convened. Notice of each meeting of the Board shall also be conspicuously posted on the Condominium Property at least forty-eight (48) hours prior to the meeting.

5.09 OPEN MEETINGS: Each meeting of the Board, to the extent required by law, shall be open to any Owner and, if required under the Act, notice of such meeting shall be mailed or personally delivered and posted conspicuously upon the Condominium Property at least 48 hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. The Board may adopt reasonable rules governing the conduct of Owners who attend meetings and Owners who do not comply with such rules may be removed from the meeting.

5.10 QUORUM: A majority of the Directors serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present.

5.11 COMPENSATION/REIMBURSEMENT FOR EXPENSES: No Director shall be compensated by the Residential Association for services rendered to the Residential Association, except as expressly provided in a resolution duly adopted by the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Director shall be reimbursed by the Residential Association for reasonable out-of-pocket expenses incurred in the course of the performance of his duties as a Director.

5.12 REMOVAL OR RESIGNATION OF DIRECTOR: Any Director may be removed from office, with or without cause, by action of the Voting Members at any annual meeting or at a special meeting called for such purpose. Any director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Any Director may resign at any time by submitting his written resignation to the Board. If a Director ceases to be an Owner or a Voting Member, he shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Director who resigns or is removed may be appointed by a majority of the remaining Directors at any regular meeting or at any special meeting called for such purpose and any successor so appointed shall serve the balance of his predecessor's term. The method of filling vacancies on the board or among the officers which shall

include authority for the remaining members of the board to fill the vacancy by two-thirds vote until the next annual meeting of unit owners or for a period terminating no later than 30 days following the filing of a petition signed by unit owners holding 20% of the votes of the association requesting a meeting of the unit owners to fill the vacancy for the balance of the term, and that a meeting of the unit owners shall be called for purposes of filling a vacancy on the board no later than 30 days following the filing of a petition signed by unit owners holding 20% of the votes of the association requesting such a meeting.

5.13 POWERS AND DUTIES OF THE BOARD : Subject to the provision of Section 8.05 of the Declaration, the Board shall have all of the powers and duties granted to it or imposed upon it by the Act, the Declaration, these By-Laws and Indiana Statute, including, without limitation, the following powers and duties:

(a) Subject to the provisions of Sections 4.05 of the Declaration, to engage the services of a manager or managing agent to assist the Residential Association in performing and providing such services as the Residential Association is required to provide to its members under the Declaration.

(b) To provide for the designation, hiring and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper for the effective administration of the Residential Association;

(c) To provide for any maintenance, repair, alteration, addition, improvement or replacement of the Common Elements for which the Residential Association is responsible under the Declaration and these By-Laws;

(d) To estimate and provide each owners with an annual budget as provided for in the Declaration;

(e) To set, give notice of, and collect assessments from the Owners as provided in the Declaration;

(f) To pay the Common Expenses;

(g) To adopt rules and regulations as provided in the Declaration;

(h) To delegate the exercise of its power to committees appointed pursuant to Section 7.01 of these By-Laws;

(i) To own, convey, encumber, lease, or otherwise deal with Dwelling Units or other real property conveyed to or purchased by the Residential Association;

(j) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Condominium Property; and



ARTICLE VI
OFFICERS

6.01 OFFICERS: The officers of the Residential Association shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such assistants to such officers as the Board may deem appropriate. All officers shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board. Officers may succeed themselves in office. The President, Secretary and Treasurer shall be Directors and all other officers may, but need not be, Directors.

6.02 VACANCY OF OFFICE: Any officer may be removed at any meeting of the Board by the affirmative vote of the majority of the Directors in office, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof.

6.03 POWERS OF OFFICERS: The respective officers of the Residential Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers of an Indiana Not-For-Profit Corporation including without limitation, the following:

(a) The President shall be the Chief Executive Officer of the Residential Association and shall preside at all meetings of the Owners and at all meetings of the Board and shall execute amendments to the Declaration and these By-Laws, as provided for in the Act, the Declaration and these By-Laws;

(b) The Vice President shall, in the absence or the disability of the President, perform the duties and exercise the powers of such office and other duties assigned by the Board. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the capacity of President on an interim basis;

(c) The Secretary shall keep minutes of all meetings of the Owners and of the Board and shall have custody of the corporate seal of the Residential Association and have charge of such other books, papers and documents as the Board may prescribe, and shall be responsible for giving and receiving all notices to be given to or by the Residential Association under the Act, the Declaration or these By-Laws;

(d) The Treasurer shall be responsible for Residential Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Residential Association books of accounts kept for such purpose. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Residential Association in such depositories as may from time to time be designated by the Board.

6.04 OFFICERS COMPENSATION: The officers shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the Voting Members.

ARTICLE VII COMMITTEES DESIGNATED BY BOARD

7.01 BOARD COMMITTEES: The Board, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall

consist of two or more Directors, which committee, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Residential Association; but the designation of such committees and delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.

7.02 SPECIAL COMMITTEES: Other committees not having and exercising the authority of the Board in the management of the Residential Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Owners and the President of the Association shall appoint the members thereof. Except as otherwise provided in such resolution, members of each such committee shall be Owners and the President of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Residential Association shall be served by such removal.

7.03 TERM: Each member of a committee shall continue as such until the next annual meeting of the Board and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member shall be removed from such committee, or unless such member shall cease to qualify as a member thereof.

7.04 CHAIRMAN: One member of each committee shall be appointed chairman.

7.05 VACANCIES: Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

7.06 QUORUM: Unless otherwise provided in the Resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority, of the members present at a meeting at which a quorum is present shall be the act of the committee.

7.07 RULES: Each committee may adopt rules for its own government not inconsistent with the Declaration, these By-Laws or with rules adopted by the Board.

ARTICLE VIII

INSTRUMENTS, CHECKS, DEPOSITS AND FUNDS

8.01 EXECUTION OF INSTRUMENT: The Board may authorize any officer or officers, agent or agents of the Residential Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any installment (including amendments to the Declaration or these By-Laws which must be executed by the Residential Association) in the name of and on behalf of the Residential Association and such authority may be general or confined to specific instances. In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President or a Vice President and attested to by the Secretary or an Assistant Secretary of the Residential Association.

8.02 PAYMENTS: All checks, drafts, vouchers or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Residential Association shall be signed by such officer or officers, agent or agents of the Residential Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board such- instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the "President or a Vice President of the Residential Association.

8.03 BANK ACCOUNTS: All funds of the Residential Association not otherwise employed shall be deposited from time to time to the credit of the Residential Association in such banks, trust companies or other depositories the Board shall elect.

8.04 SPECIAL RECEIPTS: The Board may accept on behalf of the Residential Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Residential Association.

ARTICLE IX

FISCAL MANAGEMENT

9.01 FISCAL YEAR: The fiscal year of the Residential Association shall be determined by the Board and may be changed from time to time as the Board deems

advisable.

9.02 ANNUAL STATEMENT: Within a reasonable time after the close of each fiscal year the Board shall furnish each Owner with an itemized accounting of the Common Expenses for such fiscal year actually incurred or paid, together with an indication of which portion of the Common Expenses were incurred or paid for capital expenditures or repairs or the payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the Annual Assessment budget, and showing the net excess or deficit of income over expenditures plus reserves.

9.03 ASSESSMENT PROCEDURE: Annual assessments and special assessments shall be made and collected as provided in Article Six of the Declaration, and the provisions of Article Six are incorporated herein by reference.

ARTICLE X
BOOKS AND RECORDS

The Residential Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the Authority of the Board, and shall keep at the registered or principal office of the Residential Association a record giving the names and addresses of the members. All books and records of the Association may be inspected by any Owner, or his agent, mortgagee or attorney, for any proper purpose at any reasonable time.

ARTICLE XI

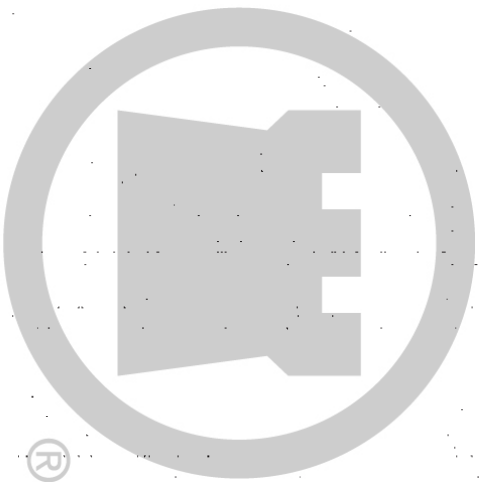
SEAL

The Board may provide for a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words "Corporate Seal, Indiana".

ARTICLE XII
AMENDMENTS

END OF DOCUMENT

These By-Laws may be amended or modified at any time, or from time to time in the same manner as provided in Section 10.02 of the Declaration; provided, that no provision of these By Laws may be amended or modified so as to conflict with the provisions of the Declaration or the Act. These By-Laws may also be amended by the Developer for the purposes and by the procedure set forth in Section 10.01 of the Declaration. No amendment to these By-Laws shall become effective until Recorded.



CHICAGO TITLE

10/18/2005
10:53 AM

FINAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE SINGLE FAMILY PORTION (PHASE 1) OF
CUMBERLAND TRAILS PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made on the 4th day of October,
2005, by Harvey Real Estate Services, LLC, an Indiana limited liability company,
("Declarant"),

cross reference
OSCO 13845

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in the Town of
Cumberland, Hancock County, Indiana, which is more particularly described (hereafter,
the "Property") as follows:

A part of the Southwest Quarter and a part of the Southeast Quarter of
Section 35, Township 16 North, Range 5 East in Buck Creek Township,
Hancock County, Indiana, said part being more particularly described as
follows:

Commencing at a Harrison Monument found marking the Northwest
corner of said Southwest Quarter; thence South 00 degrees 16 minutes 39
seconds East (assumed bearing) along the West line of said Quarter
Section 1188.00 feet to the Southwest corner of an 88 acre tract of land
per Instrument #75-1198, in the Office of the Recorder of Hancock
County, Indiana (the next four calls are along the boundaries of said 88
acre tract); North 89 degrees 54 minutes 05 seconds East 1518.00 feet;
North 04 degrees 22 minutes 52 seconds East 338.25 feet; North 89
degrees 54 minutes 05 seconds East 15.05 feet to the centerline of Buck
Creek Road; thence North 04 degrees 22 minutes 52 seconds East along
said centerline 575.76 feet to the Northern line of a transmission line
easement to IP&L recorded as Instrument #70-0478, in the Office of the
Recorder of Hancock County, Indiana and being the point of beginning of
this description; thence North 78 degrees 47 minutes 07 seconds East
along said Northern line 901.82 feet; thence North 00 degrees 09 minutes
01 second West 136.11 feet to the North line of said Quarter Section;
thence South 89 degrees 54 minutes 05 seconds West along said Quarter
line 860.49 feet to the centerline of Buck Creek Road; thence South 04
degrees 22 minutes 52 seconds West along said centerline 310.93 feet to
the Point of Beginning, containing 4.444 acres, more or less.

More commonly known as Cumberland Trails PUD PH1, Cumberland, IN

upon which Declarant intends to develop a residential subdivision; and

Carlyn
see

WHEREAS, Declarant desires to subdivide and develop the Property as herein after provided.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

The Owner of any Lots subject to these restriction, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns covenants and agrees and consents to and with Declarant, the Association, and the Owners of each of the Lots hereby affected to keep, observe, and comply with the terms and conditions hereof.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as Cumberland Trails Planned Unit Development Phase I (hereinafter "Subdivision").

ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the Cumberland Trails Homeowners Association, Inc., an Indiana not-for-profit mutual benefit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 2.5 "Common Area" means (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Pond Area, as defined below, (3) Fitness Trail Area, as defined below, and (4) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as "Common Area", "C.A.", Pond, or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Declarant" means Harvey Real Estate Services, LLC, an Indiana limited liability company, and its successors and assigns.

Section 2.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion fo the Property.

Section 2.9 "Dwelling" or Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.10 "Fitness Trail Area" means any Common Area containing a trail for walking, running or other fitness activities which now exist or is later constructed by Declarant and Fitness Trail mean any trail for walking, running or other fitness activity which now exists or is later constructed by Declarant in a Fitness Trail area.

Section 2.11 "Lot" or "Lots" means, as the context requires, an parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.12 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.13 "Plat" means the subdivision plats of the Property, which are recorded with the Recorder of the county in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.

Section 2.14 "Pond Area(s)" means any Common Area on which a pond or stream now exists or is later constructed by the Declarant and "Pond" or "Stream" means a body of water or 'dry' detention area which now exists or is later constructed by Declarant in a Pond Area.

ARTICLE III

Property Rights, Easements, and Encroachments

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provision:

- a) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Areas owned by the Association including, without limitation, parking, swimming, boating, fishing; (including the denial of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;
- b) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;
- c) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of seventy-five percent (75%) of the membership of each class of members of the Association;

- d) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- e) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by seventy-five percent (75%) of the membership of each class of members of the Association;
- f) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;
- g) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision;
- h) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

- a) Except as otherwise set forth in the Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their

agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement.

The following rights and easements reserved in this Section 3.4 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 3.4 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property. The following rights and easements reserved in this Section 3.4 are not intended to permit, and shall not be construed to permit any provider of utilities to enter any easement reserved in this Section 3.4 without the specific, prior written approval of the Association.

- a) Declarant hereby reserves unto itself, and unto any public or private utility, a general easement ("general Drainage, Utility, and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This General Drainage, Utility, and Sewer Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified or designated upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

- b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Pond Easement") and right-of-way in and to any Pond Area(s) or areas now or hereafter shown on the Plat as a "common Area", "C.A.", "Lake", "Pond", or any other Common

Area within the Property used as a water retention, detention or flowage area, or on which a Lake, Pond or Stream now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds, lakes and streams in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

- c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Fitness Trail Easement") and right-of-way in and to any Fitness trail Area(s) or areas now or hereinafter shown on the Plat as a "Common Area", "C.A.", Fitness Trail Area or any other Common Area within the Property used as a trail for walking, running and other fitness activities, or on which a Fitness Trail now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing a Fitness Trail on the property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining a Fitness Trail on the Property, which such actions shall include, but not be limited to, the construction, repair and maintenance of a trail and fitness stations in accordance with any requirements applicable law and of all governmental agencies having jurisdiction.

- d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement (Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

- e) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:
 - i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Pond, Fitness Trail, sign and Facilities Easement, or any facility at any time located therein or thereon;
 - ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress or egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,
 - iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Pond, Fitness Trail, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of the County in which the Property is located.
- f) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.
- g) Declarant shall retain full right and authority to approve Builders for Lots in the Subdivision during the Development Period and thereafter, the Association shall retain such right and authority.

Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, fitness trail, nature preserve, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in the Subdivision.

Section 3.7 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer

easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities, private utilities and Provider(s) for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities; provided, however, that the only providers of utilities which receive the Declarant's explicit written permission shall be permitted to be within the DU&E Easements. Purchasers of Lots in this Subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure or any kind and no part thereof shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included with the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and

Signage. Within any strips of ground shown or designated on a Plat as a landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period an thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done,

or no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (i) the area of any such easements and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.11 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easement upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

ARTICLE IV
Association Membership, Voting Rights,
Board of Directors, and Professional Management

Section 4.1 Membership. Initially, Harvey Real Estate Services, LLC, shall be the member (the "Initial Member"). The Initial Member shall remain a member of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member shall cease to be a member unless it also qualifies as a Class A or Class B member. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member, a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an

interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, which ever occurs earlier:

i) December 31, 2007; or

ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant subsequently records a plat of part of or all of the Property and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to or greater than the total number of votes outstanding in the Class B Membership.

Section 4.3 Board of Directors. The Board of Directors of the Association shall be appointed and/or elected as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4.4 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 4.5 Fulfillment of Commitments. Notwithstanding the cessation of the Class B membership and turnover of the Association, and notwithstanding the conveyance of any Common Area by the Declarant to the Association, the Declarant reserves the right to enter upon any Lots and/or Common Areas for the purpose of complying with any written or unwritten commitments extended to any municipality or zoning jurisdiction in connection with any zoning approvals, plat approvals, variance approvals, special use or exception approvals, and/or any other approvals granted by such municipality or zoning jurisdiction.

ARTICLE V

Covenant for Maintenance Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments.
Declarant, for each Lot now or hereafter owned by it within the Property, hereby

covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed , is deemed to covenant and agree to pay to the Association:

- a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including common Expenses); and
- b) Special assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be charged on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Yearly Assessments.

The Regular Yearly

Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

- a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be \$150 per Lot per year.
- b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty percent (20%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.
- c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty percent (20%) above the maximum Regular Yearly Assessment for the

previous year, by a vote of seventy-five percent (75%) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

- d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating

Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of seventy-five percent (75%) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Quorum. Written notice of any meeting called for the purpose of

taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Yearly Assessments and

Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

Section 5.7 Date of Commencement of Yearly Assessments: Due Dates. The

Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment

and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period i.e. annual, monthly, lump sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate in recordable form signed by an Officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.8 Effect of Nonpayment of Assessments: Remedies of the Association.

If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to the Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorney's fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.9 Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the liens of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

ARTICLE VI
Use, Restrictions, and Architectural Control

Section 6.1 Lot Use and Conveyance. All lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, outbuilding, mailbox, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Control Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval thereof as above provided. In the event that written approval is not received as required hereunder within fourteen (14) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by the Declarant, the Board of Directors, and/or the Architectural Control Committee. In any judicial proceeding challenging a determination by the Declarant, Board of Directors, and/or Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Declarant, Board of Directors, and/or Architectural Control Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Declarant, Board of Directors, and/or Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

The Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee, may in its discretion inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations. All improvements must be constructed as approved and, therefore, must be constructed per the approved plans and in the approved location. If commencement of construction of an improvement has not occurred within thirty (30) days after approval, then the Declarant, during the Development Period, and thereafter the Board of Directors or the Architectural Control Committee may, in its discretion, withdraw and revoke the approval.

Under no circumstances shall the Declarant, the Board of Directors, and/or the Architectural Control Committee be liable in any way for costs, fees, damages, delays, or any charge or liability whatsoever relating to the approval or disapproval of any plans submitted to it. Under no circumstances shall the Declarant, the Board of Directors, and/or the Architectural Control Committee be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Declarant, the Board of Directors, and/or the Architectural Control Committee make no comment, representation or warranty as (i) to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used and/or (ii) the compliance of any intended improvements with applicable laws, statutes, zoning ordinances, and/or municipal regulations. All parties should seek professional advise, engineering, and inspections on each lot prior to proposing construction.

Section 6.3 Animals. No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance and shall be kept on a leash when not within the confines of the lot owned by the owner of such lot. No animals shall be allowed to remain outside the Lot Owner's residence on a chain or leash unless in the immediate presence of the Lot Owner. No owner of a permitted pet shall allow such pet to relieve itself on any other Lot in the Subdivision. All pet owners shall be required to immediately remove any waste left by such pet in any Common Area. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the Property.

Section 6.4 Outside Storage. No clothesline, garbage cans, woodpiles or storage piles shall be stored outside on any Lot, except that receptacles for trash, refuse, garbage or recyclables shall be regularly removed from the premises only as set forth in Article VII, and shall not be allowed to accumulate thereon. Only the contractor approved by the Association shall be used to remove any trash, refuse, garbage or recyclables from any Lot, unless otherwise approved by the Association.

Section 6.5 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn, mini-barn, shed, or other out-building shall

be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.6 Motor Vehicle Repair. The parking, storage or repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot.

Section 6.7 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after such occurrence.

Section 6.8 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.9 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers. All water systems and methods of sewage disposal in this Subdivision are to be in compliance with the regulations and procedures adopted by the State Board of Health or other civil authority having jurisdiction.

Section 6.10 Residential Use and Construction. Lots may be used only for residential purposes and only for one single-family dwelling with an attached two or three car garage. All dwellings shall be provided with hard-surface driveways, with a width not less than the width of the garage door associated therewith, which shall be installed by the Builder concurrently with the original construction of the dwelling, and which shall be available for use no later than the date of the initial occupancy of such dwelling. All dwellings shall comply with zoning commitments accepted by the Town Counsel on November 20, 2002. Aluminum may be used only on soffits, fascia, gables or gutters and downspouts. No roof shall be installed on any dwelling having a roof pitch of less than 6/12 unless a lesser pitch is specifically approved by the Declarant.

Section 6.11 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have living area, exclusive of open porches, and attached garages, consistent with that contained in the zoning commitments accepted by the Town Council on November 20, 2002.

Section 6.12 Unsightly Growth. The Association shall maintain certain portions of each Lot as set forth in Article VII. With regard to any portions of any Lot not required to be maintained by the Association, and in order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to

be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.13 Site Visibility. No hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 6.14 Antennas, Satellite Dishes and Solar Technology. No towers, masts, satellite dishes larger than 18 inches in diameter, or outside antennas of any kind shall be allowed on any Lot in this Subdivision. All of the above must be located on the rear or rear corner of the Dwelling. Devices for solar technology shall be architecturally integrated within the dwelling and shall be approved by the Declarant or the Association prior to construction of the dwelling.

Section 6.15 Mechanicals and Meters. No heat pumps, air conditioning unit, gas meters or other outlying structures or appurtenance shall be installed in front of the front line of the dwelling erected on any Lot. Every effort shall be made to locate such items at least 15 feet back from the front line of such dwelling. All exterior flues shall be enclosed in the same material as used on the dwelling. All plumbing vent stacks shall be located to the rear of the dwelling. No sump pump lines, water softener lines, or other drains shall empty into any street.

Section 6.16 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, motor homes, and/or trailers shall be permitted to park on the Property or Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.17 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) square feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.18 Pond, Pond Area(s). No one shall do or permit any action or activity which could result in pollution of any Pond, diversion of water, elevation of any Pond

level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Pond management except as provided in the Declaration. A Pond may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Pond and Pond Areas may or may not exist on the Property, and the reference throughout this Declaration to Pond and Pond Areas is made in order to address Pond and Pond Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Pond or Pond Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Pond or Pond Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Pond.

Section 6.19 Storm Drainage. No outside toilets shall be permitted on any Lot in the Subdivision (except during a period of construction and then only with the consent of the Declarant) and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to enter into the storm drainage system. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance that may be abated by Declarant, the Association, any Owner in the Subdivision in any manner provided at law or in equity. The cost or expertise of abatement, including court costs and attorneys' fees shall become a charge or lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Section 6.20 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.21 Approved Builders: Sidewalks. Only Builders approved by Declarant or the Association, as set forth herein, shall be permitted to construct any dwelling upon any Lot in the Subdivision. The Builder shall install sidewalks in accordance with the requirements and standards of the Town of Cumberland, and any amendments thereto, along (and within the right-of-way of) all interior streets in the Subdivision to which such Lot abuts. Such sidewalk shall be installed by the Owner or Builder concurrently with the original construction of the dwelling on any Lot, and shall

be fully completed and available for use no later than the date of initial occupancy of such dwelling.

Section 6.22 Commencement of Construction. All construction for any Lot must be completed within one (1) year after the starting date of such construction, including final grading.

Section 6.23 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.24 Swimming Pools, Hot Tubs and Spas. No above-ground swimming pools shall be permitted or constructed on any Lot in the Subdivision.

Section 6.25 Mailboxes. All mailboxes upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors and/or the Architectural Control Committee.

Section 6.26 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- d) No commodity can be sold from the Lot or Dwelling Unit located thereon;
- e) No person can be employed other than a member of the immediate family residing in the Dwelling Unit;

f) No manufacturer or assembly operations can be conducted;

g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business; and

h) In no event shall the home occupation increase traffic from within the Property.

In no event shall the following activities be conducted: barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 6.27 Fences. No fencing, landscape screening, or walls shall be constructed, erected or installed on any Lot in the Subdivision within any easements. Only chain link coated (green or black) material is allowed for fencing.

Section 6.28 Animal Kennels, Basketball Goals. Animal kennels or quarters are prohibited. No basketball goal, whether portable, freestanding or affixed to any Dwelling shall be permitted on any Lot in the Subdivision.

Section 6.29 Wells, Tanks. No water wells shall be drilled on any of the Lots in the Subdivision without the approval of the Declarant or the Association. No septic tanks shall be installed on any of the Lots. No outside fuel storage tanks above or below ground shall be placed on any Lot in the Subdivision.

Section 6.30 Playground/Recreational Equipment. No playground or recreational equipment shall be placed or constructed upon a Lot until after it is approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

CHICAGO ARTICLE VII Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit that, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to this Dwelling Unit or

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AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP OF
CUMBERLAND TRAILS CONDOMINIUMS

C&I # 45-7990 MDS
CTIC # THIS AMENDMENT ("Amendment") is made on or as of the 1st day of August, 2012, pursuant to the provisions of the Indiana Horizontal Property Law, Indiana Code § 32-25-1-1, et seq. (the "Act").

RECITALS

- A. The Cumberland Trails Condominiums were originally established pursuant to that certain Declaration and By-Laws establishing a plan for condominium ownership of premises of Cumberland Trails Condominiums dated March 18, 2004, and recorded on May 27, 2004, as Instrument No. 16040007976 in the Office of the Recorder of Hancock County, Indiana (the "Declaration") which establishes certain condominium property thereunder (the "Property").
- B. The Property consists of a single building comprised of four Units (the "Existing Units") with a surrounding developed area (the "Existing Common Areas"), which Building and surrounding site are more specifically described on Exhibit "A" attached hereto and made a part hereof (the "Condominium Property").
- C. The condominium association for the Condominium Property is the Cumberland Trails Condominium Association, Inc. (the "Association").
- D. The Property further includes certain unimproved ground currently being used for agricultural purposes more specifically described on Exhibit "B" attached hereto (the "Unimproved Ground").
- E. In connection with the preliminary plat for the Condominium Property recorded as Instrument No. 04-007975 in Plat Cabinet C, Slide 162, in the Office of the Recorder of Hancock County, Indiana (the "Plat"), the easement for the sewer line serving the Condominium Property was established (the "Platted Easements").
- F. The Unimproved Ground has never been developed as part of the Condominium Property and the undersigned owners of the Property (the "Owners") desire for the Unimproved Property to be removed from the Condominium Property and authorize the vacation of the Plat.

DECLARATION

- 1. The Owners hereby submit this Amendment and hereby declare that the Unimproved Property shall be removed from the Condominium Property and shall no longer be part of the Cumberland Trails Condominiums. The definition of "Property" and "Condominium Property" as defined in the Declaration is hereby amended to remove the Unimproved Property therefrom.
- 2. The undivided interest of the Existing Units in the Existing Common Area shall be 25% per Unit.

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3. This Amendment is being made pursuant to Section 9.02 of the Declaration, with the approval of the undersigned Owner of the Undeveloped Property and by 75% of the Owners of the Existing Units.

4. The Owners of the Existing Units and the Association further hereby authorize and consent to the vacation of the Plat and removal of the Platted Easements by the owner of the Undeveloped Property, so long as easements remain, or are replaced, for the utilities currently in place. The owner of the Undeveloped Property shall also have the right, at its expense, to relocate the lines for such utilities.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 1st day of August, 2012.

UNIMPROVED PROPERTY OWNER:

PB-SW LAND, LLC, an Illinois limited liability

company

By: Garry T. Corrie

Printed: _____

Garry T. Corrie

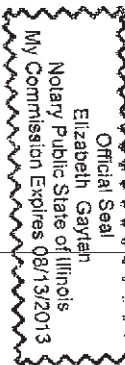
Title: Managing Director

ILLINOIS
STATE OF INDIANA
COUNTY OF COOK

)
) SS:
)

Before me, a Notary Public, in and for said County and State, personally appeared GARRY T. CORRIE, known to me to be the MANAGING DIRECTOR of PB-SW Land, LLC, an Illinois limited liability company, who acknowledged the execution of the foregoing Amendment to Declaration of Cumberland Trails Condominium Ownership of Cumberland Trails Condominiums on behalf of said company.

Witness my hand and Notarial Seal this 1st day of AUGUST, 2012.



ELIZABETH GAYLAN, Notary Public

My Commission Expires: 8-13-2013

My County of Residence: COOK

CUMBERLAND TRAILS CONDOMINIUM ASSOCIATION, INC.

By: Virginia I Goble
Virginia I Goble, President

STATE OF INDIANA)
)
COUNTY OF MARION) SS:

Before me, a Notary Public, in and for said County and State, personally appeared Virginia I. Goble, known to me to be the President of Cumberland Trails Condominium Association, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Amendment to Declaration of Cumberland Trails Condominium Ownership of Cumberland Trails Condominiums on behalf of said corporation.

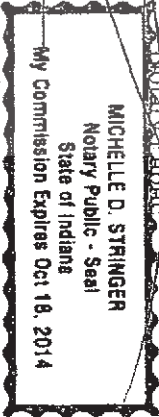
Witness my hand and Notarial Seal this 2nd day of APRIL, 2012.

My Commission Expires:



My County of Residence:

EXISTING UNIT OWNER (Units 1, 2 and 4):



PB-SW SFR, LLC, an Illinois limited liability company

By: Garry T. Corrie

Printed: Garry T. Corrie
Managing Director

Title: _____

CHICAGO TITLE

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

Before me, a Notary Public, in and for said County and State, personally appeared GHARRY T. COBLENZ, known to me to be the MANAGING DIRECTOR of PB-SW SFR, LLC, an Illinois limited liability company, who acknowledged the execution of the foregoing Amendment to Declaration of Cumberland Trails Condominium Ownership of Cumberland Trails Condominiums on behalf of said on behalf of said company.

Witness my hand and Notarial Seal this 1st day of August, 2012.

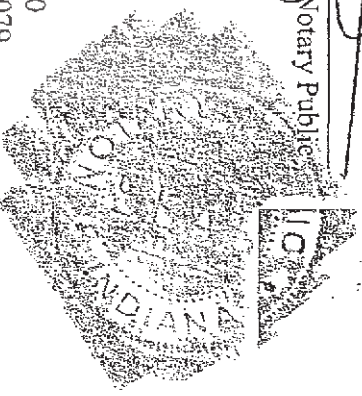

ELIZABETH SANTAW, Notary Public

My Commission Expires: 8-13-2013

My County of Residence: COOK

This instrument prepared by:

Christopher D. Long, Esq.
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 636-4341



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless otherwise required by law. [®] Christopher D. Long.

CHICAGO TITLE

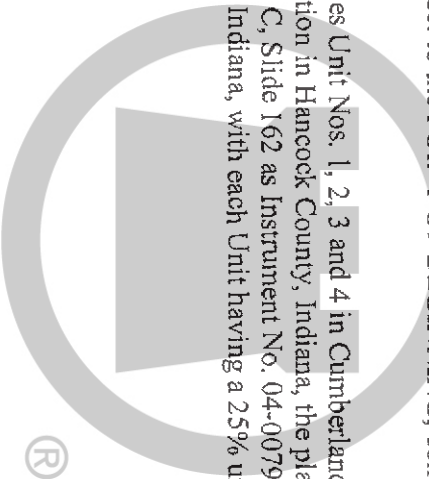
EXHIBIT "A"

[Legal Description of Building and Surrounding Common Areas]

Legal Description

Commencing at the northwest corner of the CUMBERLAND TRAILS PLANNED UNIT DEVELOPMENT PHASE 2 recorded in Plat Cabinet C Slide 162 as Instrument 04-0007975 in the Office of the Recorder of Hancock County, Indiana; thence South 04 degrees 22 minutes 52 seconds West along the west line thereof 187.37 feet to the POINT OF BEGINNING; thence continuing South 04 degrees 22 minutes 52 seconds West along the west line 184.00 feet; thence South 85 degrees 37 minutes 08 seconds East 184.00 feet; thence North 04 degrees 22 minutes 52 seconds East 184.00 feet; thence North 85 degrees 37 minutes 08 seconds West 184.00 feet to the POINT OF BEGINNING, containing 0.777 acres, more or less.

The foregoing property includes Unit Nos. 1, 2, 3 and 4 in Cumberland Trails, Phase 2, Building 1, Horizontal Regime, an addition in Hancock County, Indiana, the plat of which was recorded May 27, 2004, in Plat Cabinet C, Slide 162 as Instrument No. 04-007975 in the Office of the Recorder of Hancock County, Indiana, with each Unit having a 25% undivided interest in the above real estate.



CHICAGO TITLE

EXHIBIT "B"

[Unimproved Property]

Legal Description	
<p>CUMBERLAND TRAILS PLANNED UNIT DEVELOPMENT PHASE 2 (Plat Cabinet C Slide 162, Instrument 04-0007975)</p>	<p>A part of the Southwest Quarter and a part of the Southeast Quarter of Section 35, Township 16 North, Range 5 East in Buck Creek Township, Hancock County, Indiana, said part being more particularly described as follows:</p> <p>Commencing at a Harrison Monument found marking the Northwest corner of said Southwest Quarter; thence South 00 degrees 16 minutes 39 seconds East (assumed bearing) along the West line of said Quarter Section 1188.00 feet to the Southwest corner of an 88 acre tract of land per Instrument #75-1198 in the Office of the Recorder of Hancock County, Indiana (the next four calls are along the boundaries of said 88 acre tract); North 89 degrees 54 minutes 05 seconds East 1518.00 feet; North 04 degrees 22 minutes 52 seconds East 338.25 feet; North 89 degrees 54 minutes 05 seconds East 15.05 feet to the centerline of Buck Creek Road and being the POINT OF BEGINNING of this description; thence North 04 degrees 22 minutes 52 seconds East along said centerline 575.76 feet to the northern line of a transmission line easement to JP&L recorded as instrument #70-0478 in the Office of the Recorder of Hancock County, Indiana; thence North 78 degrees 47 minutes 07 seconds East along said northern line 1058.51 feet; thence South 14 degrees 55 minutes 23 seconds West 794.97 feet to the North line of Cumberland Village, recorded as Instrument #89-2946 in the Office of the Recorder of Hancock County, Indiana; thence South 89 degrees 13 minutes 49 seconds West along the said North line 877.64 feet to the point of beginning, Containing 14.448 acres, more or less.</p> <p>Subject, however, to all legal highways, rights of way, easements and restrictions of record.</p> <p>EXCEPTING THEREFROM:</p> <p>Commencing at the northwest corner of the CUMBERLAND TRAILS PLANNED UNIT DEVELOPMENT PHASE 2 recorded in Plat Cabinet C Slide 162 as Instrument 04-0007975 in the Office of the Recorder of Hancock County, Indiana; thence South 04 degrees 22 minutes 52 seconds West along the west line thereof 187.37 feet to the POINT OF BEGINNING; thence continuing South 04 degrees 22 minutes 52 seconds West along the west line 184.00 feet; thence South 85 degrees 37 minutes 08 seconds East 184.00 feet; thence North 04 degrees 22 minutes 52 seconds East 184.00 feet; thence North 85 degrees 37 minutes 08</p>

END OF DOCUMENT

seconds West 184.00 feet to the POINT OF BEGINNING, containing 0.777 acres,
more or less.

CONTAINING AFTER SAID EXCEPTION 13.671 ACRES, MORE OR LESS.

The foregoing real estate formally being known as Unit Nos. 5 through 60, inclusive, in Cumberland Trails, Phase 2, Building 1, Horizontal Regime, an addition in Hancock County, Indiana, the plat of which was recorded May 27, 2004, in Plat Cabinet C, Slide 162 as Instrument No. 04-007975 in the Office of the Recorder of Hancock County, Indiana.



CHICAGO TITLE