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Inst **2009-000760**

Cross-Reference:

Shepherds Grove, Section 1 (Plat), Instrument #2002-033497 (Plat Cabinet D, Slide 422 A-B)
Shepherds Grove, Section Two (Plat), Instrument # 2007-023935 (Plat Cabinet D, Slide 726 A-D)
Shepherds Grove, Declaration of Covenants, Instrument #2002-033496
Shepherds Grove, First Amendment to Declaration of Covenants, Instrument #2008-020619

AMENDED AND RESTATED

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

OF

SHEPHERD'S GROVE



SHEPHERD'S GROVE HOMEOWNERS ASSOCIATION, INC.

CHICAGO TITLE

AMENDED AND RESTATED

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
OF
SHEPHERD'S GROVE**

COMES NOW the Shepherd's Grove Homeowners Association, Inc., by its Board of Directors, on this _____ day of _____, 20____, and states as follows:

WITNESSETH THAT:

WHEREAS, the residential community in Greenwood, Johnson County, Indiana commonly known as Shepherds Grove was established upon the recording of certain Plats with the Office of the Recorder for Johnson County, Indiana; and

WHEREAS, the Plat for Shepherds Grove, Section 1, was filed with the Office of the Johnson County Recorder on October 8, 2002, as **Instrument # 2002-033497**, in Plat Cabinet D, Slides 422 A-B; and

WHEREAS, the Plat for Shepherds Grove, Section 2, was filed with the Office of the Johnson County Recorder on September 26, 2007, as **Instrument # 2007-023935**, in Plat Cabinet D, Slides 726 A-D; and

WHEREAS, the foregoing Plats contain Covenants which run with the land, namely the Declaration of Covenants for Shepherd's Grove (hereinafter "Declaration"), recorded in the office of the Johnson County Recorder on October 8, 2002, as **Instrument #2002-033496**, and amended by the First Amendment to the Declaration of Covenants for Shepherds Grove, recorded October 1, 2008, as **Instrument #2008-020619**, which states that by taking a deed to any Lot as set forth on the above listed Plats for Shepherds Grove development, each owner becomes a mandatory member of Shepherds Grove Homeowners Association, Inc., an Indiana nonprofit corporation (hereinafter "Association"); and

WHEREAS, the Association was incorporated pursuant to the above listed Declaration as a non-profit corporation pursuant to Articles of Incorporation filed with, and approved by, the Indiana Secretary of State on February 21, 2002, for the purpose of implementing and administering the Plat covenants and the covenants set forth in the Declaration; and

WHEREAS, the Declaration, Section 37, provides that the Declaration may be amended at any time by the approval of a majority of the Lot Owners in Shepherd's Grove who are in good standing. The approved amendment must be executed by the President and Secretary of the Association certifying that a majority of the Lot Owners in Shepherd's Grove who are in good standing approved the amendment. Then the approved amendment must then be recorded with the Johnson County Recorder's Office; and

WHEREAS, the Association and its Member Owners desire to amend and replace the Declaration by approving and adopting this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherd's Grove: and

WHEREAS, a majority of the Lot Owners of the Association in good standing have voted in favor of this amendment, with the written approvals and signatures of each individual Owner casting a vote being attached to this amendment and marked as "Exhibit B";

NOW, THEREFORE, the undersigned Association and its Member Owners, with the approval of at least a majority of the Owners in Shepherd's Grove, hereby amend or modify the Declaration, and all supplements and amendments thereto; and all property located within the Shepherd's Grove development is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Shepherd's Grove community and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate, according to the language stated as follows:

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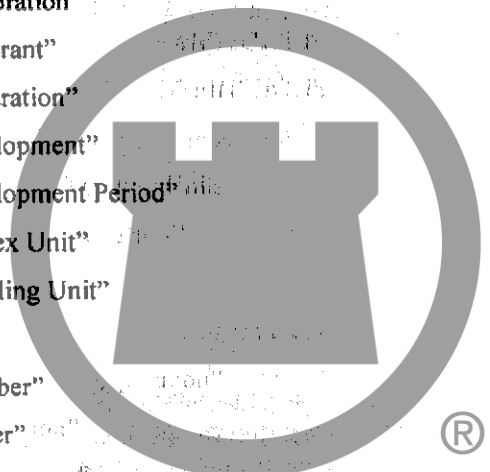
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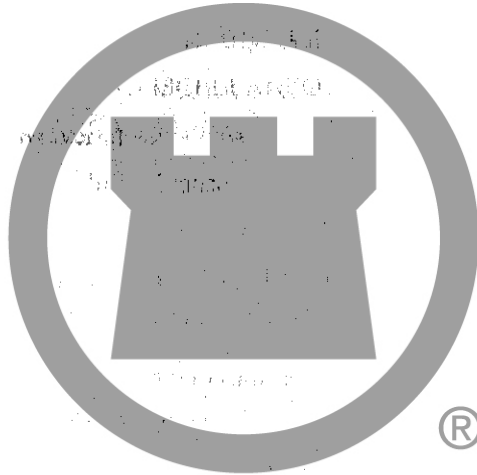
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AMENDED AND RESTATED

**DECLARATION OF COVENANTS, CONDITIONS
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ARTICLE I.

DEFINITIONS

Section 1. General Definitions. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

a) "Adjoining Dwelling Unit" shall mean and refer to any Dwelling Unit adjoined to another Dwelling Unit by a Common Wall and constituting part of a Duplex Unit.

b) "Additional Properties" shall mean and refer to the Real Estate or any part thereof as described in Article II, Section 2, of the Declaration.

c) "Applicable Date" shall mean and refer to the date as set forth in Article IV, Section 3, of the Declaration.

d) "Architectural Control Committee", also called "Committee" or "ACC", and also generally referred to sometimes as the "Building Committee"; shall mean and refer to the architectural control committee described in Article VII of this Declaration;

e) "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Association, as filed with the Indiana Secretary of State, as may be amended from time to time.

f) "Association" shall mean and refer to Shepherd's Grove Homeowners Association, Inc., an Indiana not-for-profit Corporation which is incorporated under said name or a similar name, its successors and assigns, which may be also referred to as the "Association" or the "Corporation" in the Declaration, Articles and Bylaws.

g) "Assessment" shall mean and refer to any charge against a Lot imposed pursuant to the provisions of Article IX of this Declaration;

h) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association;

i) "Bylaws" shall mean and refer to the Code of Bylaws adopted by the Association, as the same may be amended from time to time;

j) "Common Area(s)" shall mean those areas and all improvements located thereon that are

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identified on the Plats of the Development or those areas on the Plats of the Development that fall outside the marked Common Areas, but are not a part of any Lot, and which are for the use, benefit and enjoyment of all Owners.

k) "Common Expenses" shall mean the actual and estimated expenses for the administration of the Association, and the expenses for the maintenance, management, operation, repair, improvement and replacement of the Common Areas; enforcement of the provisions in the Declaration, Articles, Bylaws and any adopted Rules and Regulations of the community; and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association and/or its Members.

l) "Corporation" shall mean and refer to Shepherd's Grove Homeowners Association, Inc., an Indiana not-for-profit Corporation which is incorporated under said name or a similar name, its successors and assigns, which may be also referred to as the "Association" or the "Corporation" in the Declaration, Articles and Bylaws;

m) "Declarant" shall mean and refer to Shepherd's Grove Development, Inc., and its successors and assigns, or should (i) such successors and/or assigns acquire all or substantially all of the Lots from Shepherd's Grove Development, Inc., for the purpose of development, and (ii) any such assignee receives by assignment from Shepherd's Grove Development, Inc., all or a portion of its rights hereunder as such Declarant, by an instrument expressly assigning such rights of Declarant to such assignee. No person or entity acquiring title to any Vacant Lot(s) in the Development subsequent to those Lot(s) being owned by Declarant or pursuant to judicial order, foreclosure proceeding, bankruptcy proceeding, or other legal action shall be deemed to be the "Declarant"; and no person or entity purchasing one or more Lots from Shepherd's Grove Development, Inc. in the ordinary course of business shall be considered as "Declarant";

n) "Declaration" shall mean and refer to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Shepherd's Grove, and any amendments or supplements thereto recorded thereafter, in the Office of the Recorder of Johnson County, Indiana;

o) "Development" or "The Development" shall mean and refer to the properties subject to this Declaration as set forth in Article II hereof and described in "Exhibit A" attached hereto, together with such additions to the real property as may hereafter be made thereto as provided in Article II.

p) "Development Period" shall mean the period of time during which Declarant owns at least one (1) Lot.

q) "Duplex Unit" or "Duplex" shall mean and refer to a dwelling structure containing two (2) attached Dwelling Units attached by, or sharing, a common wall; 

r) "Dwelling Unit" or "Unit" shall mean and refer to all levels or stories of the single family dwelling constructed on a Tract;

s) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded deed transferring a portion of the Real Estate, or any subdivision map(s) or plat(s) of the Real Estate, as amended from time to time, which is designated as a Lot thereon and which is or will be improved with one (1) Duplex Unit thereon. Each Lot shall be divided into two (2) separately designated Tracts. The term "Lot" shall be deemed to include any Dwelling Units, if any, located thereon.

t) "Member" shall mean a person or entity entitled to membership in the Association, as provided for in the Declaration, Articles or these Bylaws.

u) "Owner" shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to any Lot or Tract, but in any event shall NOT include or mean to refer to any person(s) or entities which hold interest in any Lot or property herein merely as security for the performance of an obligation. The term "Owner" shall also not include purchasers on contract, or occupants pursuant to any other agreement, that allow a person other than the non-titled Owner of the Lot or Tract to reside or occupy the Lot or Tract;

v) "Plats" shall mean and refer to any and all drawings including, but not limited to, any plats of the Shepherd's Grove Development, any as-built survey, and any elevation, floor, foundation, electrical, mechanical, truss lay-out, cross section, grading site and landscape plans, recorded in the Office of the Recorder of Johnson County, of or pertaining to the Real Estate or any real estate that is annexed to the Real Estate and recorded with a Supplemental Declaration;

w) "Properties" shall mean and refer to the properties subject to this Declaration as set forth in Article II hereof and described in "Exhibit A" attached hereto, together with such additions to the real property as may hereafter be made thereto as provided in Article II.

x) "Real Estate" shall mean and refer to the properties subject to this Declaration as set forth in Article II hereof and described in "Exhibit A" attached hereto, together with such additions to the real property as may hereafter be made thereto as provided in Article II.

y) "Resident" shall mean any resident of a deeded Lot, including Owners of the Lot as well as non-owners of the Lot who shall be required to follow and comply with all Covenants and Restrictions.

z) "Shepherd's Grove" shall mean and refer to the properties subject to this Declaration as set forth in Article II hereof and described in "Exhibit A" attached hereto, together with such additions to the real property as may hereafter be made thereto as provided in Article II;

aa) "Subsequent Developer" shall mean and refer to any person or entity that acquires title to any Vacant Lot(s) in the Development subsequent to those Lot(s) being owned by Declarant. A "Subsequent Developer" shall include any person or entity that obtains title to any Vacant Lot(s) pursuant to judicial order, foreclosure proceeding, bankruptcy proceeding, or other legal action;

bb) "Tract" shall mean and refer to each half Lot which is conveyed as a separately designated freehold estate. Tracts shall be delineated and described as a metes and bounds part of the Lot of which it is a part. The term "Tract" shall include any Dwelling Unit constructed thereon;

cc) "Vacant Lot" shall mean and refer to each Lot in the Development that is undeveloped or has no Duplex Unit constructed on it, or that has a Duplex Unit constructed on it that is not completed and ready for sale.

Section 2. Other Terms. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them; otherwise, each term shall be interpreted using the common or legal meaning associated with the term or word.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Properties. The Real Estate which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration are located in the City of Greenwood, Johnson County, State of Indiana, and are more particularly described in "Exhibit A" attached hereto, and are incorporated herein by reference for all purposes.

Section 2. Additions to Properties. Additional real property may become subject to this Declaration in any of the following manners:

(a) The Declarant shall have the right and power, acting alone and without the consent or approval of the Owners, the Corporation, the Board, any mortgagee or any other person, to add or annex additional real property that will be subject to this Declaration by executing and recording one (1) or more amendments or supplements, titled Supplemental Declaration of Covenants, Conditions and Restrictions ("Supplemental Declaration"), which shall extend the Covenants and Restrictions of this Declaration to such property; provided, however, that such Supplemental Declaration may contain such additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not materially inconsistent with this Declaration in a manner which adversely affects the concept of this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to this Declaration, such proposed annexation must have the prior written consent and approval of each and every Owner.

(c) Any additions made pursuant to subsections (a) and (b) above, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added as of the date each Supplemental Declaration is recorded. Notwithstanding the aforementioned, any obligation to the Association set forth in this Declaration incurred prior to a Supplemental Declaration being recorded shall not be effected by the subsequent recording of a Supplemental Declaration.

Section 3. Individual Lots. The Shepherds Grove Development is intended to be a maintenance free Duplex community designed to serve senior, retired, professional, and/or "empty-nest" couples and residents. All Lots in the Development shall only have a Duplex Unit constructed on it. No individual, unattached residential Dwelling Units, or structures containing more than two (2) attached Dwelling Units, shall be constructed on any Lot.

Section 4. Common Areas. The Declarant or any Subsequent Developer who holds title to any of the platted and designated Common Areas in the Shepherds Grove Development shall deed, or transfer, ownership of the Common Areas to the Association. The use of these Common Areas is limited in fashion as set forth on the Plats and in this Declaration. The Declarant or Subsequent Developer cannot reduce or change the size, shape or location of the Common Areas from that as described on the Plats of the Development. If the Common Areas are not transferred to the Association: i) within sixty (60) days of the Applicable Date; or ii) after sixty (60) days

advanced written notice, sent from the Association to the current Owner via certified U.S. Mail, requesting such transfer from the current Owner in fee simple of the Common Areas to the Association, whichever occurs first, the Association may pass any and all Common Expenses incurred in the maintenance, repair or upkeep of the Common Areas to the Owner of the Common Areas until the Common Areas are transferred in title to the Association. These Common Expenses shall be treated as unpaid assessments and collected in the same fashion as unpaid assessments as set forth in this Declaration.

ARTICLE III

PROPERTY RIGHTS AND EASEMENTS

Section 1. In General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each subsequent owner, mortgagee, contract purchaser, and occupant of any part of the Real Estate, by the acceptance of a deed, the acceptance of a mortgage, the execution of a contract, or the act of occupancy of any part of the Real Estate, shall accept such deed, accept such mortgage, execute such contract, or assume occupancy subject to the covenants, terms and conditions of this Declaration. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of the Association with respect to this Declaration, the Plats, the Articles, the Bylaws, and all rules and regulations adopted thereto and also for themselves, their heirs, personal representatives, successors and assigns, agrees and consents to be bound by, observe and comply with the provisions, requirements and restrictions set forth in this Declaration, the Plats, the Articles, the Bylaws, and all rules and regulations adopted thereto. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, the Plats, the Articles, the Bylaws, and all rules and regulations adopted thereto.

Section 2. Easements of Enjoyment in Common Areas. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the Bylaws and subject to the following provisions:

- i) The right of the Association, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon, to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such encumbrance shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- ii) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.
- iii) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee

of such easement.

- iv) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved (i) during the Development Period, by the Developer, and (ii) after the Development Period, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such dedication or transfer shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- v) The right of the Association to adopt rules and regulations governing the use, operation and maintenance of the Common Areas;
- vi) The right of the Association to suspend the voting rights of any Owner and to suspend the right of any individual to use any of the Common Areas for any period during which the Owner remains in violation of any provision of this Declaration, Bylaw or any Rule or Regulation adopted pursuant thereto;
- vii) With respect to any and all portions of the Common Areas, Declarant, until Declarant no longer owns record title to any Lot, shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Greenwood or any other governmental agency having appropriate jurisdiction over the Common Areas) to: (i) alter, improve, landscape and/or maintain the Common Areas; (ii) employ or utilize construction and/or engineering measures and activities of any kind or nature whatsoever upon or within the Common Areas; (iii) zone, rezone or seek and obtain variances or permits of any kind or nature whatsoever upon or within the Common Areas; (iv) replat or redesign the shape or configuration of the Common Areas; and (v) seek and obtain any and all permits, licenses or exemptions from any and all governmental agencies exercising jurisdiction over the Common Areas and/or the uses or activities thereon.
- viii) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate.

Section 3. Easement for Declarant and Subsequent Developer

A. The Declarant and any Subsequent Developer of any portion of the undeveloped Real Estate shall have an easement for access to the Real Estate, including any Lots and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated or required by this Declaration, including, without limitation, any improvements or changes permitted and described under the terms of this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

B. In addition to the easement set forth above, the Declarant and any Subsequent Developer of

any portion of the undeveloped Real Estate hereby reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under any Utility Easement Areas, as set forth on any Plat or Plan of the Development, or as described in this Declaration, (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to the Declarant and any Subsequent Developer of any portion of the undeveloped Real Estate may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, the Declarant and any Subsequent Developer of any portion of the undeveloped Real Estate may grant such similar or lesser easements, rights or privileges, to use a portion of the Real Estate to supply exclusive telecommunications services to each Lot. The easements, rights and privileges reserved under this Section shall be for the exclusive benefit of the Declarant and any Subsequent Developer of any portion of the undeveloped Real Estate and may not be impaired, limited or transferred, sold or granted to any person or entity by the Association or any of the Owners.

Section 4. Drainage & Utility Easement (D.U.E.). Drainage and Utility Easements for the installation and maintenance of utilities and drainage facilities are reserved for the use of the public utilities, the Association, and the City of Greenwood, as shown on the recorded Plats, to install, inspect, repair, replace and maintain water and sewer mains, poles, ducts, lines, wires, and drainage facilities. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. Except as may be set forth in this Declaration for storm drainage and drainage swale maintenance, the easement areas of each Lot and all improvements thereon shall be maintained by the Owner of the Lot.

Section 5. Drainage Easements (D.E.). Drainage Easements are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground. It shall be the responsibility of each individual Lot Owner to maintain drainage across his Lot. Under no circumstances shall any drainage easement be blocked in any manner by construction or reconstruction of any improvement, nor shall any grading restrict water in any manner. Drainage Easement areas are subject to construction and reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, the Association, the Declarant, its successors and assigns, and any Subsequent Developer. No permanent structures shall be erected or maintained upon the drainage easements.

Section 6. Utility Easements (U.E.). Utility Easements are created for use of public and private utility and cable television companies, not including transportation companies, for installation, maintenance, repair and replacement of poles, pipes, mains, ducts, cables, and other related utility structures, as well as for uses specified in the case of sewer easements.

Section 7. Sanitary Sewer Easements (S.E.). Sanitary Sewer Easements are created and dedicated to the City of Greenwood Sewer Utility for use for the installation, maintenance and replacement of pipes, mains, laterals, forcemains, manholes and other related facilities, as well as for uses specified in the case of sewer easements. Lot Owners in Shepherds Grove are required to connect with any public sanitary sewer available.

Section 8. Non-Access Easements (N.A.E.). Non-Access Easements are created to prevent vehicular access from Lots or Blocks to streets, roads or paths adjoining such Lots or Blocks. No driveways or other types of improvement for vehicular ingress and egress shall be allowed within any area designated as a Non-Access Easement.

Section 9. Rights-of-Way. Private rights-of-way are also created to provide access to easements (i.e. drainage, utility, sewer and landscape easements). These easements rights are restricted for the use of the public or private entities having jurisdiction or rights in the easements and any improvements thereon. Owners of Lots shall not construct, or permit to be constructed, any structure or obstruction on or over any part of any private right-of-way, or interfere with the ability of the Association, the Declarant, its successors and assigns, and any Subsequent Developer to use or gain access to any private right-of-way.

Section 10. Storm Drainage Maintenance. The maintenance of the storm drainage system for this subdivision by the homeowners association shall include, but shall not be limited to, the maintenance of all detention areas, inlet structures, open ditches, pipes, swales, and paved swales. The costs and expenses of such maintenance of the storm drainage system shall be assessed as part of the regular assessment against the Owners of all Lots in this subdivision as provided for in the Declaration and shall be secured by a lien against all Lots in this subdivision. Sump pumps, gravity drains, and other drains serving individual residences on Lots shall discharge onto grass surfaces no closer to the roads than the building set back line and a minimum of ten feet (10') from the drainage swales.

Section 11. Drainage Swales. Drainage swales (ditches and drainage detention areas) on dedicated easements are not to be altered, dug out, filled in, tiled, or otherwise changed without the written permission of the Association. Property owners must maintain these swales as sodded grass across or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that the drainage swales or ditches will not be damaged by the water runoff. Any property owner altering, changing or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage after which time, if no action is taken, the Association will cause the repairs to be made and the statement for costs of the repairs will be sent to the affected property owner for immediate payment and such costs shall constitute a lien on the property owner's Lot until paid. ®

Section 12. Sidewalks. Sidewalks shall be constructed as required by the sidewalk plan approved by the Johnson County Plan Commission, which construction shall be the responsibility of the lot owner upon whose lot the sidewalk is to be constructed, provided, however, that any Common Area sidewalks shall be constructed by the Developer or the subsequent owner of the Common Areas as designated on the final development sidewalk plan before the Common Area is turned over to the Association. All sidewalks shall be completed at the same time as the driveway is constructed on the lot by the lot owner. All sidewalks shall be poured concrete, with expansion joints, such construction to be perpetual and continuous along the street frontages and across the driveway of each lot.

Section 13. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service and security patrol vehicles to enter upon the Common Areas, including but not limited to drives, in the performance of their duties; and further, an easement is hereby granted to the Association, its officers, directors, agents, employees and management personnel to enter the Common Areas to render any emergency service deemed necessary or advisable under the circumstances.

Section 14. Medians, Islands and Entry Easements. There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as Common Areas. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

Section 15. Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of the Declarant, and its successors and assigns, and persons constructing improvements within the Real Estate, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas. If title to any undeveloped portion of the Real Estate is sold or transferred pursuant to foreclosure, bankruptcy or other legal proceeding, the Subsequent Developer of the undeveloped portion of the Real Estate may maintain signs, sales offices, construction offices, and model houses along with any other facilities which may be reasonably required or incidental to the completion or sale of Lots in the development ONLY with the prior written approval or permission of the Association. The failure of any Subsequent Developer to obtain such prior written approval or permission from the Association shall be cause for the removal of any installed, placed or constructed signs, sales offices, construction offices, and model houses along with any other facilities by court ordered injunction.

Section 16. Maintenance Easement. There is hereby reserved and created for the use of Declarant, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth; removing trash; and taking any other action necessary to remove or abate any violation of the Declaration, plat, or adopted Rules and Regulations of the Association. The Association and their respective agents, employees, successors and assigns shall not be responsible or held liable in any manner for any damage or injury to any property or person resulting from the reasonable exercise of this Maintenance Easement.

Section 17. Easement to Association. Declarant hereby grants a non-exclusive easement in favor of the Association for the maintenance of the Common Areas and those areas of the Lots as set forth in this Declaration. Said easement shall permit the Association or its employees, agents or designees to enter any Lot to maintain the Common Areas or the Lots, to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the Real Estate. Said easement shall also permit the Association or its employees, agents or designees to enter any Lot for the purpose of reconstruction and restoration in the event of casualty.

Section 18. Encroachment Easements. The boundaries for each Lot shall be shown on the Plat; provided, however, that in the event a Dwelling Unit encroaches upon another Dwelling Unit or Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid permanent easement for exclusive use shall be deemed to exist and run to the favor of the Owner of the encroaching improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.

ARTICLE IV

THE ASSOCIATION, MEMBERSHIP & VOTING

Section 1. Organization of the Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the Code of Bylaws of the Association.

Section 2. Membership in Association. Each Lot Owner, automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member until such Owner ceases to be an Owner, at which time membership will be transferred to the new Owner of the Lot; provided, however, that any person who holds the interest of an Owner merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he automatically shall become an Owner and a member of the Corporation.

Section 3. Voting Rights. The membership of the Association shall consist of two (2) classes of membership with the following rights:

a) **Class A Membership.** Class A Members shall be all Owners except for Class B Members. Each Class A Member shall be entitled to one (1) vote for each Tract owned by such Member with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. In the event that any Tract shall be owned by more than one person, partnership, trust, corporation, or other entity, each shall be a Member but they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Class A Members, only one (1) vote is cast for each Tract.

b) **Class B Membership.** Class B Members shall be the Declarant and all successors and assigns of Declarant. Subsequent Developers of any portion of the Real Estate shall NOT be Class B Members. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner with respect to each matter submitted to a vote of the Association. The Class B Membership shall cease and terminate upon the "Applicable Date", which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the Association; (ii) at such time as the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; (iii) at such time as seventy-five percent (75%) of the Development has been developed and sold by the Declarant or a builder to an Owner; or (iv) at such time as Declarant no longer owns any Lots in the Development; or (v) as of January 1, 2013.

c) **Vacant Lot and Dwelling Unit Votes.** Except as set forth in subsection (b), the Owner of a vacant lot shall be entitled to only one (1) vote per vacant lot owned. Once a Duplex Unit has been constructed on a Lot and the Dwelling Units are approved by the local authorities for residency, then the Owner of each Tract shall be entitled to one (1) vote.

Section 4. Transition of Control of Association. The Declarant shall transfer control of the Association to the Members as soon as is practical following the "Applicable Date". As part of the transition process, the Declarant and the owners may by agreement determine the best method of conducting the transition process, or the Declarant may call for a special meeting of the Members pursuant to the procedures set forth under the Bylaws, and the Members shall be allowed to elect the

Board of Directors to succeed the Declarant or Declarant's appointed Board. The Board elected by the Members shall take control of the Association upon being elected. Within thirty (30) days of the date of the transition, the Declarant shall be responsible for providing to the newly elected Board: i) all Association documents, including, but not limited to, all Declarations, Articles, Bylaws, and rules and regulations, and any amendments or supplements thereto; ii) all financial documents of the Association, including, but not limited to, all bank statements, checkbooks, and financial or audit statements; iii) all architectural requests and the decision of the Association in response to said requests; iv) all letters of enforcement or violation notices sent to Members; v) all contracts, leases or agreements with any employee, vendor, management agent, service provider, or other party; vi) all insurance policies of the Association; vii) all annual corporate filings of the Association; and viii) any other documents that the Declarant deems necessary or appropriate in the operation of the Association.

Section 5. Functions of the Association. The Association is formed for the purpose of providing for the maintenance, repair, upkeep, replacement administration, operation and ownership of the Common Areas and, if approved by the members as set forth herein, for the maintenance, repair and replacement of such exterior portions of the Tracts, Lots and Dwelling Units. The Association shall also administer and enforce the covenants and restrictions contained herein, along with any rules and regulations adopted hereto. In addition, the Association shall collect and disburse the assessments and charges hereinafter created for operation of the Association. The powers and duties of the Association and the Board of Directors shall be set forth in this Declaration, the Articles, the Bylaws and the rules and regulations of the Association. The Articles and Bylaws shall also set forth the procedures to be used by the Association and Board to conduct meetings, hold elections, and perform the other functions of the Association.

Section 6. Suspension of Membership Rights. No Member shown on the books or management accounts of the Association to be more than thirty (30) days delinquent on any assessment or other payment due to the Association shall be eligible to vote, either in person or by proxy, to be elected or serve on the Association's Board of Directors, or to use any of the Common Area facilities, if any. For purposes of this provision, the thirty (30) days period begins on the first day of the fiscal year or the due date of the assessment as set by the Board of Directors pursuant to the Declaration, and "payment" shall mean payment of the full assessment amount due, plus any collection fees, interest, late fees, attorney fees and court costs that are due and owing to the Association pursuant to the provisions of the Declaration(s) or these Bylaws. Hence, if any Owner arranges payment of an assessment through a payment option offered by the Association, and that payment arrangement does not pay the entire assessment amount within thirty (30) days of the assessment becoming due, then that Owner's voting rights shall be compromised as set forth under this provision until the entire assessment is paid in full. In addition, payment of delinquent accounts by any method other than cash at a meeting where a vote will be held does not cease any suspension under this provision until the funds from the payment are actually received by the Association.

A Member's rights may also be suspended for violations of the Declaration, Articles, Bylaws, or any other adopted rules or regulations of the Association, and the Member's rights shall remain suspended so long as the Owner remains in violation of said provisions. No Member found to be in violation of the Declaration, Articles, Bylaws, or any other adopted rules or regulations of the Association shall be eligible to vote, either in person or by proxy, to be elected or serve on the Association's Board of Directors, or to use any of the Common Area facilities, if any. The Board shall have the authority, in its sole discretion, to determine whether an Owner is in violation of the Declaration, Articles, Bylaws, or any other adopted rules or regulations of the Association. A judicial determination that an Owner is in violation of any of the aforementioned documents shall constitute prima facie evidence that the Owner is in violation of this provision.

Any Member who has had their right to vote suspended pursuant to this section shall not count toward any quorum requirement set forth in the Declaration, Articles or Bylaws and shall not count toward the percentage of Owner needed to pass amendments to this Declaration.

ARTICLE V

REAL ESTATE TAXES & UTILITIES

Section 1. Real Estate Taxes. Real estate taxes on each Lot and any improvements on each Lot are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas or Limited Common Areas shall be paid by the Corporation, considered a Common Expense, and included in the Assessments against each Lot in the manner hereinafter provided.

Section 2. Utilities. Each Owner shall pay for his own water, gas, electric, cable television, and other utilities which shall be separately metered and/or billed to each Lot. Utilities which are not separately metered to an Owner's Lot, or are used for the Common Areas, shall be paid by the Corporation, considered a Common Expense, and included in the Assessments against each Lot.

ARTICLE VI

MAINTENANCE, REPAIRS AND REPLACEMENTS

Section 1. Common Area Maintenance. Maintenance, repairs, replacements and upkeep of the Common Areas, Common Area facilities, any improvements thereon, and any maintenance required on islands and medians located in the public right-of-way shall be furnished by the Association as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Section 2. Lot and Unit Maintenance by the Association. In addition to maintenance upon the Common Area, the Association shall also provide exterior maintenance upon each Lot which is subject to Assessment hereunder as follows:

- a) paint, repair, replacement and care of roofs, roof decking, gutters, downspouts, and exterior building surfaces;
- b) mowing and landscaping of all Lots/Tracts, except as herein provided; and
- c) repair, maintenance, and replacement of all mailboxes and mailbox posts, if so determined by the Board;

Such exterior maintenance responsibilities shall not include any utility lines (including, but not limited to, water, sewer, gas, electric, telephone, and cable lines); Lot grading or drainage (except as provided in the Plats or Declaration); glass surfaces; exterior light fixtures; screens and screen doors; door and window fixtures and other hardware; overhead garage doors; patios and decks; balconies, if any; sidewalks, driveways, porches, or other exterior concrete improvements; Lot fencing erected or installed by the Owner; and any other items as the Board may so designate by adopted rule or regulation (unless specifically designated in this Declaration as the Association's obligation), so long as such items of exception shall apply to all units equally. However, the Association shall be responsible for staining or painting the exterior surfaces of exterior doors, including the front doors and garage doors.

As used in this section, the term "exterior building surfaces" includes siding, brickwork, sheathing, felt, house wrap, starter strips, flashing, wood trim, and masonry block. However, the term does not include the internal chimney fixtures, skylights, shutters, water spigots or other exterior outlets, internal portions of exterior walls or roofing, or any portion of a building's framework, including studs, rafters, trusses, blocking, ridge boards and braces.

In addition, the Association shall not be responsible for: i) the maintenance, repair or replacement

(exterior or interior) of any enclosed patio/deck/sunroom or other improvement which was not part of the original Dwelling Unit Construction, unless expressly approved by the Board; and ii) any portion of a Dwelling Unit that is blocked or obscured by the subsequent installation, erection or construction of an improvement or other addition onto the original Dwelling Unit structure by the Owner. The Association may refuse to provide certain maintenance, repair or replacement to those portions of any Dwelling Unit that are blocked or obscured by the subsequent installation, erection or construction of an improvement or other addition onto the original Dwelling Unit structure by the Owner (e.g. Association may refuse to paint or maintain portions of a Dwelling Unit that have been enclosed within a patio or deck area and are no longer accessible from outside the Dwelling Unit). In such circumstances, the Association shall provide the Dwelling Unit Owner with a written notice of the Association's refusal to maintain, repair or replace portions of his Dwelling Unit and state the reason for such refusal.

The term "landscaping" includes mowing, lawn weed eating (trimming), and fertilization services only. The term does not include pruning, planting or removing trees; trimming, planting or removing bushes; planting flowers; or watering grass or other vegetation. In addition, the Association shall not be responsible for mowing or landscaping any portion of an Owner's yard enclosed by a fence or other barrier. Nevertheless, the fact an Owner has enclosed a portion of his yard inside fencing does not eliminate the Owner's requirement to pay any or all portions of the regular assessment that covers mowing and landscaping.

Section 3. Lot and Unit Maintenance by the Owner. Each Owner shall be responsible for maintaining and keeping all portions of his Tract and all improvements thereon in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed or maintained by the Association, including, but not limited to, pruning, planting or removing trees; trimming, planting or removing bushes; planting flowers; cleaning the gutters, or watering grass or other vegetation.

In addition, each Owner of a Tract shall, at his own expense, be responsible for, and shall promptly perform as the need arises, all maintenance, repairs, replacement and upkeep (including cleaning and/or washing) of the windows, doors (including, but not limited to, garage doors, exterior doors and interior doors), and chimney structures of such Owner's Dwelling Unit.

Also, each Owner of a Tract shall, at his own expense, be responsible for, and shall promptly perform as the need arises, all maintenance, repairs, replacement and upkeep of all interior and exterior lights (including, but not limited to, light fixtures, light bulbs, light panes, and electrical wiring) appurtenant to his Dwelling Unit which are controlled by a switch located on the inside of his Dwelling Unit. Each Owner of a Tract shall, at his own expense, be responsible for, and shall promptly perform as the need arises, all maintenance, repairs, replacement and upkeep of all electrical outlets and receptacles affixed to the exterior of his Dwelling Unit. Each Owner shall promptly perform all maintenance and repair of his Tract and Dwelling Unit which, if neglected, might adversely affect any other Tract, Lot or Dwelling Unit or any part of the Common Areas.

In addition to the above-referenced responsibilities, each Owner of a Tract shall, at his own expense, be responsible for, and shall promptly perform as the need arises, all interior maintenance, repairs, decoration, replacement and upkeep of his own Dwelling Unit, appliances, and other personal property resulting from or related to any water leak emanating from a water or sewer line or the roof.

In addition, each Owner of a Tract shall, at his own expense, be responsible for, and shall promptly perform as the need arises, all interior maintenance, repairs, decoration, replacement and upkeep of the Dwelling Unit, appliances and personal property resulting from external damage or injury to the structure of the Dwelling Unit or Lot caused by any of the natural elements (i.e., fire, wind, and water) or by any act of God.

With respect to such external damage or injury to the structure of the Dwelling Unit, Duplex Unit, Tract or Lot caused by any of the natural elements or by an act of God, the Association shall only be responsible for, and shall promptly furnish, at its own expense and in the manner it deems necessary or

suitable, the repair of such external damage or injury to such structure.

The Association shall not be responsible for any damage to the interior portion of a Dwelling Unit, including, but not limited to, interior portions of walls and ceilings, drywall, carpet, painting, etc.; any improvements made therein; or the Owner's personal contents therein caused by an external roof, building or structural leak, unless such damage is caused by and the direct result of the willful or reckless misconduct of the Association. The Association's following of a planned or structured method of exterior roof and building replacement, maintenance and repair as set forth in a reserve study or engineering study shall constitute a defense to any allegation of negligent, willful or reckless misconduct.

Section 4. Vacant Lot Maintenance. The Association shall not be responsible for maintaining vacant Lots. All vacant Lots shall be maintained by the Declarant, Subsequent Developer, Builder, or Owner of the undeveloped or vacant Lot. Vacant Lots shall be maintained by the Owner in a clean, neat sanitary, attractive and uncluttered manner, and grass or other vegetation on the Lot shall not exceed eight (8) inches in height.

For purposes of this section, the Association shall have the sole right and discretion to determine whether the condition or appearance of a Lot reasonably constitutes an "unsightly or unkempt" condition or appearance when compared or considered in relation to the condition or appearance of the other homes and/or Lots in the Shepherds Grove subdivision as a whole. If it is determined the Lot is in need of maintenance, the Association may use any provision within this Declaration or the rules and regulations to abate the condition of the Vacant Lot so that it complies with the requirements of this Declaration or the rules and regulations of the Association.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. The Architectural Control Committee There shall be established as a standing committee of the Corporation, an Architectural Control Committee, which shall be comprised of one (1) or more individuals selected and appointed by the Board of Directors and shall serve at their discretion. Each member of the Architectural Control Committee shall be an Owner or one of the persons constituting a multiple Owner. The Architectural Control Committee shall consist of a Chairman (who shall be elected by the members of such Committee), and two (2) or more Owners. Members of the Board of Directors may serve on or constitute the Committee as deemed necessary or appropriate by the Board of Directors.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein, but only to the extent approved by the Board. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

Section 2. Purposes. The Committee shall have exclusive jurisdiction over new or existing construction, modifications, additions, alterations or improvements made on or to existing Lots, Tracts, Dwelling Units, and/or any open spaces, if any, appurtenant thereto. The Committee shall act to preserve the natural setting and beauty of the Real Estate, to establish and preserve a harmonious and aesthetically pleasing design for the Real Estate, and to protect and promote the value of the Real Estate, the Lots and

all improvements located therein or thereon. To this end, the Common Areas and each Lot, Tract and Dwelling Unit shall be subject to the restrictions set forth in this Declaration and any rules, regulations and/or guidelines adopted by the Association or the Committee. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction the rules, regulations and/or guidelines of the Committee, as well as the decisions of the Committee.

Section 3. Review and Approval. No building, structure, fence, wall, deck, or other type of improvement of any kind or nature shall be erected, constructed, placed, altered, changed or modified on any Lot, Tract or Dwelling Unit unless and until two (2) copies of the plans and specifications and related data (including, if required by the Committee, significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".

For any construction, modification, or improvement set forth in this Declaration that requires prior Committee approval, the Committee reserves the right to adopt rules or procedures which waive or reserve the prior approval requirement set forth herein if an Owner complies or follows the provisions, requirements or restrictions set forth in the Declaration or any rules, regulations or guidelines adopted by the Association.

To clarify, a Lot Owner must submit to and receive written approval from the Committee *before* any exterior Lot, Tract and Dwelling Unit work is performed, including, but not limited to, exterior painting of any portion of Dwelling Unit, including exterior door surfaces; roof repair or replacement; siding repair or replacement; concrete repair or replacement, such as driveways, sidewalks and patios; and any landscaping, yard or vegetation maintenance, repair or replacement that is not the responsibility of the Association.

Section 4. Procedures. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. A copy of submitted materials shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons. Email submissions and notifications may be mutually agreed upon by Owner and the Committee, but only if all email communications are sent or directed as "return receipt requested" to verify mailing and receipt of the email transmission. Failure of the Committee to make a written ruling on any application within thirty (30) days of submission shall be deemed an automatic denial of the submission.

Under no circumstance does any member or individual of the Board or Committee have the authority to verbally grant or approve any architectural request or issue a written approval without the proper approval of the respective Board or Committee. Owners in the Development are hereby given notice that any verbal or unauthorized approval for any architectural improvement project is hereby considered invalid and will not act as an estoppel or defense against the Board's or Committee's request for written application for the project or the subsequent denial of the project by the Board or Committee.

Section 5. Power of Disapproval. The Committee may deny or refuse to grant the architectural request for the any of the following reasons:

- (1) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration or any rules and regulations adopted thereto;

- (2) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot, Tract, Dwelling Unit or with other adjacent Tracts, Dwelling Units, buildings or structures, including trim, siding, roof and brick colors;
- (3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any part of other Owners.

The Committee has the authority to reserve approval of any architectural request upon or until modification of the plans, materials, location or scope of any project by the Owner based upon the recommendation or request of the Committee.

Section 6. Architectural Rules and Regulations. The Committee shall have the authority to promulgate additional architectural rules, regulations and/or guidelines for the Real Estate in addition to, or to supplement, those restrictions and standards set forth in this Declaration, including, but not limited to, rules regarding specific requirements for new building construction, such as setback requirements (aside from those reserved on the plats or by local ordinance), ground elevations, and roof pitch; provided, that none of the rules, regulations and/or guidelines adopted by the Committee conflict with any other restriction, requirement or standard set forth elsewhere in this Declaration.

Section 7. No Waiver of Future Approvals. Each submission shall be separately evaluated by the Committee, and the approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 8. Appeal of Committee Decision. If the Committee and Board are not combined, then any decision made by the Committee may be appealed to the Board of the Association within fifteen (15) days of the Committee's decision. The Board, upon receipt of the appeal from an Owner, shall hold a meeting within fifteen (15) days from the date the appeal is received by the Board with the Owner and the chairman of the Committee to hear both sides of the matter. After the meeting, the Board shall issue its decision in writing on whether to uphold the decision of the Committee, reverse the decision of the Committee, or modify the decision of the Committee in any fashion the Board deems necessary or appropriate under the circumstances. Decisions by the Board are final. If the Committee and Board are the same body, then there shall be no further appeal rights beyond the Board's decision on an architectural request.

Section 9. Variances. Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from the architectural standards set forth in this Declaration or the rules, regulations and/or guidelines adopted pursuant thereto, if a situation arises whereby to hold the Owner to the strict terms of the Declaration would impose unreasonable hardship upon the Owner or if exceptional circumstances exist which would justify such a variance. A situation where it would be costly for an Owner to remove an improvement that was constructed or installed without first obtaining proper approval is NOT deemed to be an unreasonable hardship that justifies a variance. The Committee may also consider an appeal based upon the existence of technological advances in design and materials and such comparable or alternative techniques, methods or materials which may or may not be permitted under the current terms or restrictions set forth in the Declaration, or any rules, regulations and/or guidelines adopted thereto.

Each such written request must identify and set forth in detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought.

Any grant of a variance by the Committee must be in writing and must identify in narrative detail both the standards from which a variance is being sought and the specific variance being granted. If the Committee and Board are not combined, the Committee may not grant a variance; however, the Committee may make a recommendation to the Board to grant a variance. All variances must be approved by the Board in writing before becoming effective.

In any such case, the variance shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to enforce the Declaration, or any rules, regulations and/or guidelines adopted thereto, against any other Owner. Whether or not to grant a variance is solely the determination of the Board, and a decision to grant a variance in one instance does not require the Board to grant a variance in another instance, even if the facts are similar in nature.

No member of the Committee shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance requested by an Owner or any person acting for on behalf of any Owner.

Section 10. Compensation and Non-Liability of Committee. No member of the Committee, nor their designated representative, shall be entitled to any compensation for services performed hereunder nor be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed, actions taken, or inaction in connection with any undertaking, responsibility, or activity hereunder or request for action hereunder.

Neither the Association, Committee, Board, nor the officers, directors, members, employees and agents of any of them, shall be liable for damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against the Association, Committee, Board, or the officers, directors, members, employees or agents of any of them, to recover any such damages and hereby releases and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Plans and specifications are not approved for engineering or structural design or adequacy of materials, and by approving such plans and specifications neither the Committee, the members of the Committee, the Board, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications.

Section 11. Non-Conforming and Unapproved Improvements. The Association may require any Owner to restore such Owner's Lot, Tract, Dwelling Unit or other improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration or any rule, regulation or guideline adopted by the Committee or Board, or the improvement does not comply with the plans or specifications of any submitted and approved architectural request. If an Owner wishes to make any changes or modifications to any previously approved architectural project during the erection or construction of the project, then a new architectural request form must be submitted to and approved by the Committee before such changes or modifications to previously approved plans or specifications may be made.

In addition, if the Owner refuses to restore his Lot, Tract, Dwelling Unit or other improvements to their original condition as provided by this Article, then the Association may, but has no obligation to do so, cause such restoration, demolition and removal at the Association's cost, and the Association shall then

levy the amount of the cost thereof as a special individual assessment against the Owner and the Lot or Tract upon which such improvements were commenced or constructed, and said special individual assessment shall be collected in the same fashion as other assessments set forth in this Declaration.

ARTICLE VIII

COMMON WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of a single family Dwelling Unit on the Real Estate and placed on or adjacent to the dividing line between two (2) Lots shall constitute a common wall. To the extent not inconsistent with the provisions of this Declaration or the requirements of the City of Greenwood, the general rules of law regarding common walls and liability for property damage due to negligence or willful acts or omissions shall apply. No Owner shall damage, destroy, cut through or make any penetration through a common wall for any reason whatsoever.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a common wall, other than that caused by the negligence or willful misconduct of either Owner, shall be shared by the Owners who make use of the wall, in proportion to their respective use of the common wall. All repairs and maintenance to common walls shall be made within a reasonable time after such repairs and maintenance becomes necessary. Upon reasonable notice and at a reasonable time, either Owner, or the Association, shall have the right to enter upon the adjoining Tract for the purpose of repairing or maintaining a common wall.

Section 3. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered or paid by insurance, an Owner, who by his negligent or willful act, causes any portion of an unexposed common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. "Necessary protection" as used herein shall constitute repairing the exposed common wall in a permanent manner so it conforms with the original construction of such common wall.

Section 4. Destruction by Fire or Other Casualty. If any such common wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, his agents, invitees, guests or members of his family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly, in proportion to their respective use of the common wall; provided, however, any and all proceeds from applicable insurance policies will be available to offset the expense of such repairs.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

Section 6. Damage Caused by One Owner. If any common wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, invitees, or guests or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the wall to as good condition as formerly, without cost to the adjoining Owner; provided,

however, any and all proceeds from applicable insurance policies will be available to offset the expense of such repairs. No Owner shall alter or change a common wall in any manner. Each common wall shall remain in the same location as originally constructed. No windows or other opening shall be added to any common wall.

Section 7. Arbitration. In the event of any dispute arising under the provisions of this Article, each Owner of a Dwelling Unit who is a party to such dispute shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and a decision regarding the disputed matter shall be made by a majority of all the arbitrators. Should any Owner of a Dwelling Unit who is a party to such dispute refuse to appoint an arbitrator within ten (10) days after written request therefore from another Owner, the Board may, upon request, select an arbitrator for the refusing Owner.

Section 8. Rights of Association. In the event the Owners of Dwelling Units cannot resolve a dispute regarding a Common Wall within a reasonable time period, and it is determined by the Association that the status or condition of the Common Wall poses a risk or threat of additional or continued damage to the Dwelling Units using the Common Wall or to any other Dwelling Unit, then the Association has the right, but not the obligation, to conduct any necessary repairs to the Common Wall deemed necessary to prevent additional or continued damage and to pass the expense of said repairs or maintenance jointly and severally among the Owners of the Dwelling Units sharing the Common Wall requiring the repairs or maintenance. If the expense is not paid by the Owners upon demand, then it shall be treated as an assessment upon the Lot and collectible in the same fashion as other assessments levied by the Association.

ARTICLE IX

ASSESSMENTS

Section 1. Annual Accounting. Annually after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation following the end of such fiscal year, the Board shall cause to be furnished to each Owner a statement prepared in form and substance acceptable to the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year by the Corporation.

Section 2. Liability for Assessments. Each Owner of any Lot or Tract subject to this Declaration, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for maintenance, insurance, taxes and other costs and expenses incurred by the Association and, (2) special assessments for capital improvements and operating deficits. Such assessments are mandatory; shall be distributed or shared among the Tract and Lot Owners on an equal, or pro-rata, basis; and shall be established and collected as hereinafter provided. Each Tract shall be charged one (1) assessment; and each Vacant Lot, which consists of two (2) Tracts when completed, shall be charged two (2) assessments.

The annual and special assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall be a charge on each Tract and Lot and shall be a continuing lien upon the property against which each such assessments are made. Each such assessment, together with interest, late fees, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment became due. If more than one person owned the property when the assessment became due, then the co-owners shall be joint and severally liable for the personal obligation for unpaid assessments. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Suspension of an Owner's voting rights

shall not waive or excuse an Owner's obligation to pay any assessments or other obligations to the Association. The Declarant shall not be liable for paying any regular or special assessments. However, any Subsequent Developer shall be liable for paying all regular and special assessments levied by the Association on each Lot or Tract owned by the Subsequent Developer.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Development; to ensure compliance with and the enforcement of the restrictions, rules and regulations set forth in or adopted pursuant to the Declaration, Articles or Bylaws; and for the management, maintenance, repair, and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners) and, if approved by the members as set forth herein, the maintenance, repair, upkeep, and replacement of such exterior portions of the Lots and Dwelling Units.

Section 4. Regular Assessment. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth the amount of the regular assessment sufficient to cover all anticipated expenses for the coming fiscal year (with appropriate allocations for expenses attributed to any shared facilities), together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Common Areas and, if approved by the members, the exterior portions of the Lots, Tracts or Dwelling Units as designated in this Declaration. A copy of this budget shall be delivered to each owner at least thirty (30) days prior to the beginning of each fiscal year of the Association.

Section 5. Special Assessment. In addition to the regular assessments authorized above, the Association may levy a special assessment 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 may from time to time incur; or to cover any operating deficits that may occur should the Board of Directors determine at any time during the fiscal year that the regular assessments levied for that year are insufficient to pay for the common expenses of the Association for that fiscal year. The Board of Directors may approve a special assessment without the approval of the members, so long as the amount of each special assessment does not exceed fifty percent (50%) of the amount of the regular assessment for the fiscal year in which the special assessment is approved. If the Board determines that a special assessment larger than fifty percent (50%) of the regular assessment is required, then the Board shall call a special meeting of the Association to consider imposing such special assessment; and a special assessment which is more than fifty percent (50%) of the regular assessment amount shall be imposed only with the approval of two-thirds (2/3) of all eligible Members of the Association voting in person or by proxy at a duly constituted special meeting called for the purpose of voting on said special assessment. A special assessment shall be due and payable on the dates(s) determined by the Board of Directors. A special assessment may be established to run for a period of years (i.e. \$3,000/ Tract/Lot paid @ \$1,000/year for 3 years); however, any special assessment that is to run beyond the fiscal year in which it is passed must be approved by two-thirds (2/3) of all eligible Members of the Association voting in person or by proxy at a duly constituted special meeting called for the purpose of voting on said special assessment regardless of the amount of the special assessment.

Section 6. Fiscal Year; Date of Commencement; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner for assessments under this Declaration shall commence as of the date such Owner acquires his interest in a Lot or Tract. The regular assessment for a fiscal year shall become due and payable commencing on the first day of each fiscal year of the Association, or upon another date deemed appropriate or desirable by the Association. Regular assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such

assessments in monthly, quarterly or semi-annual installments.

Section 7. Reserves. The regular assessments shall include reasonable amounts, as determined by the Board of Directors, as reserves for the future periodic maintenance, repair, and replacement of the Common Areas and, if approved by the members as set forth herein, the maintenance, repair, upkeep, and replacement of such exterior portions of the Tracts, Lots and Dwelling Units. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited in a separate, interest bearing bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not co-mingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of regular or special assessments.

Within two (2) years of the recording of this Declaration, the Board shall cause a comprehensive reserve study of the Common Areas and any other portions of the Tracts or Lots that are the responsibility of the Association to be performed by a reputable and qualified reserve study specialist or engineering company. Every five (5) years thereafter, the Board shall have the reserve study updated by a reputable and qualified reserve study specialist or engineering company. This reserve study shall be used to determine the amount of reserves that should be paid by each Owner on an annual basis to provide for the long-term maintenance, repair and replacement of the Common Areas and, if necessary, the exterior portions of the Tracts, Lots and Dwelling Units.

Section 8. Failure of Owner to Pay Assessments. If any assessment (or installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment (the fiscal year annual balance of the regular assessment or the entire balance of a special assessment) shall become delinquent and shall become, together with such interest thereon, late fees and other costs of collection thereof as hereinafter provided, a continuing lien on the Tract/Lot, binding upon the then Tract/Lot Owner, his heirs, devisees, successors, and assigns. The personal obligation of the then Tract/Lot Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. No Tract/Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Tract/Lot or by waiving or not using the Common Areas.

If the assessment is not paid within thirty (30) days after the assessment falls due, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (1.5 % per month) or the maximum lawful rate, whichever is less. In addition, the Association may impose reasonable late fees on all delinquencies in an amount(s) determined by the Board from time to time. If the Association employs legal counsel to pursue the collection of unpaid assessments, the Owner shall be personally obligated to pay any collection costs or expenses for the sending of collection letters or other correspondence or communication prior to the filing of legal action, or for the Association's attorney to take any other action in an attempt to collect the unpaid assessments. The Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing the collection notices and letters, preparing and filing the complaint in such action, interest and late fees on the assessment as above provided, and reasonable attorneys' fees, together with the costs of the action.

In addition, an Owner who becomes more than thirty (30) days delinquent on any assessment or other payment due to the Association shall not be eligible to vote, either in person or by proxy, to be elected or serve on the Association's Board of Directors, or to use any of the Common Area facilities, if any, pursuant to the provisions set forth in the Declaration.

Section 9. Subordination of Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Tract/Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid

installment of any Regular Assessment or Special Assessment as to such installments which become due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Tract/Lot or the purchaser thereof at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments the Regular Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a common expense collectible from all Owners (including the subject Tract/Lot from which it arose).

ARTICLE X

MORTGAGES

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his/her Tract/Lot or such mortgagee or an insurer or guarantor of a first mortgage lien upon a Tract/Lot (hereinafter such mortgagee, insurer or guarantor referred to as a "Mortgagee"), shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Until notification of any such mortgage and the name and address of the Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage or otherwise.

Section 2. Notice of Certain Actions and Conditions. The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of:

- a) any condemnation loss or any casualty loss which affects a material portion of the Real Estate or any Tract/Lot on which there is a first mortgage;
- b) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days;
- c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation which affects any Tract/Lot on which there is a first mortgage; and
- d) any proposed action which would require the consent or approval of Mortgagees.

Section 3. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed Mortgagee or a proposed purchaser who has a contractual right to purchase a Tract/Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments other charges against the Tract/Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of a Tract/Lot shall not be liable for nor shall the Tract/Lot conveyed be subject to a lien for any unpaid Assessments or charges in excess of the amounts set forth in such statement.

Section 4. Unpaid Taxes and Insurance. Mortgagees shall have the right, but not the obligation, to pay any taxes or other charges against the Common Areas which are in default and which have or may become a lien against any Tract/Lot. In addition, Mortgagees shall have the right, but not the

obligation, to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas, and the Mortgagees making such payments shall be owed immediate reimbursement therefore by the Corporation.

ARTICLE XI

INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Dwelling Units, Duplex Units and the Common Areas in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, Duplex Units and Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Association as provided in the Bylaws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Common Area directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, if obtain, shall (to the extent the same are obtainable) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (ii) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Owners and Mortgagees and at least ten (10) days prior written notice to the Association.

Section 2. Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of the foregoing with respect to the Real Estate, all Owners of Lots/Tracts and all other persons entitled to occupy any Lot, Tract or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Association.

Section 3. Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittance shall be to the Owner and the Owner's Mortgagee jointly.

The deductible payments paid by the Association as part of any claim for a casualty or damage loss to any portion of any Dwelling Unit, Duplex Unit or Common Area shall be a Common Expense of the Association; unless it is determined that such claim was the result of damages or loss caused by the intentional, reckless or negligent act of any Owner or their guests and/or invitees, in which case any deductible payments paid by the Association shall be deemed to be a special common expense assessed against the Tract Owner responsible for the intentional, reckless or negligent actions, and that Tract Owner shall be responsible for paying or reimbursing the Association the deductible payment.

Claims for a casualty or damage loss to any portion of any Dwelling Unit, Duplex Unit or Common Area must be submitted to the insurance carrier only by the Board of Directors. No individual Owner may submit a claim for casualty or damage loss directly to the Association's insurance carrier unless the Board has given the Owner prior written permission to do so.

In the event of condemnation of all or any part of the Common Area, the Association, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owner or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstance shall any distribution of insurance proceeds or condemnation awards as relates to the Common Area be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

Section 5. Insufficient Proceeds from Insurance. If any insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost of restoring the damage and repairing and reconstructing the Dwelling Units, Duplex Units or any Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be included in the Regular Assessments of the Association.

Section 6. Insurance by Owners. Each Owner shall be solely responsible for loss or damage to the interior and contents of such Owner's Dwelling Unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures (i.e. carpet, tile, flooring, drywall, wallpaper, ceiling fans, window blinds, etc.), furnishings, appliances, betterments and other improvements installed by him) and such Owner's personal property stored elsewhere on the Tract regardless of how said loss or damage was caused (including, but not limited to, the negligence of the Association); and the Association shall have no liability to the Owner for loss or damage to the interior and contents of any Dwelling Unit or any personal property stored elsewhere on the Tract. Each Owner shall be solely responsible for obtaining its own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at its own expense as such Owner may deem necessary, but all such insurance obtained shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policies to be obtained by the Corporation.

ARTICLE XII.

CASUALTY AND RESTORATION

Section 1. Restoration of the Dwelling Units or Duplex Units.

- a) Damage to or destruction of any Dwelling Unit or Duplex Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed at the direction of the Association and the proceeds of insurance, if any, shall be applied for that purpose.
- b) If the insurance proceeds, if any, received by the Association as trustee as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstruction the Dwelling Units or Duplex Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units or Duplex Units damaged in proportion to the ratio that damages to an Owner's Dwelling Unit bears to the total damage to all Dwelling Units or Duplex Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units or Duplex Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.
- c) For purposes of subparagraph (a) and (b) above, repair, reconstruction and restoration shall mean construction rebuilding of the Dwelling Units or Duplex Units to as near as possible the same condition as they existed immediately prior to the damage or deconstruction and with the same type of architecture.
- d) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association acts as the trustee for the insurance funds for the restoration of such property as provided in Article XI, and the Board of Directors shall obtain reliable and detailed estimates of the costs to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.
- e) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

- i. If the estimated costs of reconstruction and repair of the Dwelling Units or Duplex Units is more than Sixty Thousand Dollars (\$60,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the service and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of construction fund remaining after payment of the sum so requested.
- ii. Encroachments upon or in favor of Dwelling Units or Duplex Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units or Duplex Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units or Duplex Units stand.
- iii. In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units or Duplex Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

Section 2. Restoration of Common Areas. In the event of damage to or destruction of any of the Common Areas due to fire or other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the costs of such repair and reconstruction.

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

For the purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

ARTICLE XIII

USE OF COMMON AREAS

Section 1. Restricted Actions by Owners. No Owner shall permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinance or which will or may reasonably result in the cancellation of or increase of any insurance carried by the Association. No waste shall be committed in or on the Common Areas.

Section 2. Damage to the Common Areas. Each Owner shall be liable to the Association for any damage to the Common Areas caused by the negligence or the willful or reckless misconduct of the Owner, Owner's family, guests, pets, or invitees. In addition, if any tree, planting, structure or other improvement on a Lot encroaches on any Common Area or causes damage or interference with the use or maintenance of any Common Area, the Association shall have the right to take any action necessary to correct the problem, including, but not limited to, the modification, moving or removal of any tree, planting, structure or other improvement so that it no longer encroaches on any Common Area or causes damage or interferes with the use or maintenance of any Common Area.

Section 3. Rules and Regulations. The Board is granted the right to adopt rules and regulations governing the use, operation and enjoyment of the Common Areas and facilities, and all Owners hereby covenant and agree that they, their occupants, guests and invitees shall abide by any rules and regulations adopted by the Board regarding the use, operation and enjoyment of the Common Areas and facilities. The Board shall have the power to enforce compliance with said rules and regulations, and may suspend an Owner's, and an Owner's family and guests, use of the Common Areas or facilities for a period time deemed appropriate by the Board, and/or pursue all other appropriate legal and equitable remedies. An Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees, incurred by the Association in connection therewith.

ARTICLE XIV
CONSTRUCTION AND USE RESTRICTIONS

Section 1. Lot Use. The following shall apply to the general use of Lots in the development:

- A. **Residential Use.** Except as specifically permitted herein, all Lots shall be used exclusively for residential purposes and for occupancy by a single family. No other structure shall be erected constructed upon any Lot except for a Duplex Unit consisting of two (2) single-family Dwelling Units joined by a common wall. Each Dwelling Unit shall have an attached garage for at least two (2) vehicles.
- B. **Business Use.** No hotel building, boarding house, mercantile or factory building or buildings of any kind for commercial use shall be erected or maintained on any Tract/Lot in the subdivision.

No trade or business may be conducted in or from any Tract/Lot, except that an Owner or occupant residing in the Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the

business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate, such as employees or customers, or door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

- C. **Rental Restriction.** In addition, for the purpose of maintaining the congenial and residential character of Shepherds Grove, and for the protection and maintenance of property values by encouraging the maintenance, improvement and updating of the Tracts/Lots within the Shepherds Grove community, the renting or leasing of a Dwelling Unit or Tract/Lot in the Shepherds Grove subdivision by any titled Owner or other person holding any ownership interest in any Tract/Lot in Shepherds Grove, or their agent or representative, shall not be allowed. Each Dwelling Unit and/or Tract/Lot in Shepherds Grove shall be occupied only by the titled Owner or other person holding any ownership interest in any Tract/Lot in Shepherds Grove, their immediate family, and temporary visitors and guests.

This restriction prohibiting the renting or leasing of Dwelling Unit and/or Tracts/Lots in Shepherds Grove takes effect upon the date this covenant amendment is recorded with the Johnson County Recorder's Office, and is applicable to any and all lot Owners, or other persons holding any ownership interest in any lot in Shepherds Grove, regardless of whether the owner or person took title or interest in their property in Shepherds Grove prior to or after the effective date of this amendment. Any Dwelling Unit or Tract/Lot being currently rented or leased pursuant to the terms of a properly executed written rental or lease agreement as of the effective date of this amendment shall be allowed to run through the end date of the agreement; however, said rental or lease agreement shall not be extended, renewed, or negotiated under a new rental or lease agreement.

The Board may approve an exception to this restriction, but only in circumstances when an exception is necessary or desired in order to comply with or accommodate federal or state disability laws, estate planning requirements of an Owner, or other applicable laws.

Section 2. Dwelling Unit Construction Standards

- A. **Diligence in Construction.** Unless delayed by strikes, war, court injunction, or Acts of God, the construction of a Duplex Unit, both interior and exterior, shall be completed within one (1) year from commencement of construction. Restoration and repair of any Duplex Unit which is partially or totally destroyed by fire or other casualty shall be commenced within forty-five (45) days from the time of such destruction or damage and shall be completed within six (6) months. If restoration or repairs cannot be commenced within forty-five (45) days or completed within six (6) months, then the Tract Owner shall

petition the Board for an extension of the six (6) month period. Failure to request and obtain an extension from the Board may forfeit the Tract Owner's ability to restore or repair the property. The Association shall have standing and authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

- B. **Occupancy of Dwelling Unit.** No Dwelling Unit constructed on any Lot shall be occupied or used for residential purposes until a certificate of permanent occupancy has been obtained from the appropriate Johnson County governmental authorities.
- C. **Minimum Living Space.** The minimum square footage of living space of any Dwelling Unit in Shepherds Grove, exclusive of porches, garages, or basements, shall be fifteen hundred (1,500) square feet or the minimum square footage of such a Dwelling Unit as provided by local code or ordinance, whichever is greater.
- D. **Foundation.** All residences shall have a permanent foundation. Mobile homes or other residential structures that do not have permanent foundations shall not be permitted in the Development.
- E. **Windows.** All residences shall have windows on each façade of the residence unless the Committee grants a special exception based on architectural features or landscaping.
- F. **Awnings and Shutters.**
 - (1). **Awnings.** Awnings, patio covers, covers, overhangs or other similar structures shall be of a retractable nature, permanently mounted or affixed to the Dwelling Unit on the Tract/Lot; shall not extend beyond the rear foundation corner of the Dwelling Unit in any direction; shall be made from nylon, canvas, or other material approved by the Committee, and shall be kept or maintained in proper working order.
No awnings, patio covers, covers, overhangs or other similar structures constructed of metal, wood, fiberglass, or other material or design which cannot be retracted shall be permitted, erected or situated on any Tract/Lot in the Subdivision (excluding material used in the structural frame of any approved retractable awning). For purposes of this rule, a wooden pergola or a gazebo is considered to be a structure which must be approved by the Committee; however, they are not considered to be an awning.
Before any awning, patio cover, cover, overhang or other similar structure may be erected, constructed or placed on any Tract/Lot, the Owner shall submit a written request for the awning or cover and receive written approval for the awning or cover from the Committee.
 - (2). **Shutters.** Unless installed at the time of construction of the residence, an Owner shall submit a written request and obtain written approval by the Committee before installing any shutters on his residence. If an Owner is replacing or repairing currently installed shutters, he may do so without approval of the Committee unless the new shutters are of a different style, shape, size or color than the original shutters being repaired or replaced.
- G. **Garages.** All residences shall have an attached garage which will accommodate at least two (2) automobiles. Garages in Shepherds Grove shall be used for the purposes of parking or storage of vehicles and, if additional space is available, the storage of personal

possessions and other household items; however, garages shall not be used solely for the storage of personal possessions and other household items exclusively. Garages shall not be used for any type of commercial vehicle repair facility or other similar type of business operation. Because parking space in Shepherds Grove is limited, garages in the subdivision may not be used for temporary or permanent residential or recreational areas exclusively, and may not be modified or used in any manner that reduces the number of automobiles which may be reasonably be parked therein to a number less than the number of automobiles that could have been reasonably parked in the garage as it was originally designed and built (i.e. a 2 car garage must be able to accommodate 2 cars at all times).

No additions or alterations to any garage in Shepherds Grove may be made until the Owner submits written plans for the changes, and those plans are approved by the Committee.

H. **Air Cooling Units.** Air cooling units and other similar facilities must be located at the side or rear of the Dwelling Unit except as may be permitted by the Committee. No window air conditioning units may be installed on any Tract/Lot unless the Owner submits a written request and obtains written approval by the Committee before installing the window air conditioning unit.

I. **Exterior Dwelling Unit Appearance.** The colors and types of exterior building materials may be specified or limited by the Committee.

i) **Appearance.** It is the intent and desire of the Board to promote and maintain an aesthetically pleasing appearance within the neighborhood. To this end, it is the goal of this covenant to control the exterior appearance of the Dwelling Units and other improvements in Shepherds Grove, including, but not limited to, the gutters, fences, decks, shutters, windows and doors (both residential and garage) so that they are harmonious and consistent in appearance with the majority of homes in the subdivision.

The Committee shall approve the colors that may be used for all Dwelling Units and other improvements in the Shepherds Grove neighborhood. So long as the Dwelling Unit Owner is repainting their Unit or improvement the same color as originally painted, then the Owner does not need to receive prior written approval of the Committee before painting their Unit or improvement.

If an Owner wishes to change the color of their Dwelling Unit or improvement from its original color, then the Owner shall submit the color scheme, including paint samples, to the Committee for their written approval before painting any portion of their Dwelling Unit or other improvement. The Committee has the sole discretion to determine whether the color will be harmonious and consistent with the appearance of other Dwelling Units and improvements in the neighborhood, and the Committee may deny any request for paint color change if they believe the color would not be harmonious or consistent with the colors of Units and improvements already existing in the neighborhood. The decision of whether to approve a color that does not already exist in the Shepherds Grove Development is solely within the discretion of the Committee.

Because of their inability to blend well with most colors found in Shepherds Grove, the Board must insist that bright, bold or vivid colors, such as bright yellows, reds, pinks, oranges, purples or greens, and neon or fluorescent colors are not permitted in Shepherds Grove. The fact that an Owner has already painted their Dwelling Unit or improvement before submitting their request or receiving

Committee approval does not operate as a waiver or obligation for the Committee to approve the submission. Any color installed before being submitted to the Committee, and then subsequently denied by the Committee, shall be re-painted a color approved by the Committee. Pursuant to the Declaration, the Committee may take action to gain the removal or repainting of any non-conforming or unapproved exterior Dwelling Unit or other improvement color through legal or other equitable means.

ii). **Siding and Trim.** Owners must replace all siding and masonry on the exterior of the Dwelling Unit with the same style, material and color siding, trim or masonry as originally installed on the Dwelling Unit. If the Owner wishes to change the style, material or color of the siding, trim or masonry of his Dwelling Unit, then the Owner must submit a written request and obtain written approval by the Committee for installing or making any modifications or changes to the siding, trim or masonry. ***ABSOLUTELY NO WOOD OR ALUMINUM SIDING REQUESTS WILL BE APPROVED BY THE COMMITTEE. INSTALLATION OF WOOD OR ALUMINUM SIDING ON ANY DWELLING UNIT IN SHEPHERDS GROVE IS EXPRESSLY PROHIBITED AND SHALL NOT BE ALLOWED OR PERMITTED.***

iii). **Roofs.** All roofs in Shepherds Grove shall consist of asphalt or fiberglass shingles and shall be consistent in style and color with that originally installed on the Dwelling Unit. No metal or aluminum roofs shall be permitted in the Development. Unless the Owner is replacing his roofing with the same style and color roofing as currently exists on the home, the Owner must submit a written request and obtain written approval by the Committee before making any changes in the roofing style or color. For example, if a roof is damaged in a hail storm, and is being replaced, the Owner does not need Committee approval to replace the roof with the same style, material and color of shingle; but the Owner would need to submit for and receive written approval from the Committee before installing a new roof of a different style, material or color.

If a roof is damaged and needs be replaced or repaired, those repairs must be made within thirty (30) days from the date the roof was damaged or the shingles blew off, unless the Owner requests from the Committee more time to complete the repairs and a longer time period for repair or replacement is approved in writing by the Committee.

J. **Maintenance and Damages during Construction.** All owners and their builders/contractors shall be responsible for and maintain any construction job site in reasonable order, containing all trash and debris within the Tract/Lot and properly disposing of or removing the same. Likewise, all owners and their builders/contractors shall be responsible for repairing any damage during construction, whether or not such damage was inadvertent, accidental or unavoidable, including, but not limited to, damage to the streets, drainage area(s), utilities or other improvements within the Development.

Section 3. Exterior Lot Restrictions

A. **Landscaping.** No Owner shall be allowed to plant or remove trees, bushes, shrubbery or do any landscaping or gardening on any Tract/Lot or along lake beds, ditches, culverts or in any of the Common Areas except with the express permission from the Committee. Each Owner shall provide reasonable landscaping on his Lot, including at a minimum, suitable foundation landscaping on the front of the home. The Committee may, in its discretion, adopt landscaping guidelines to promote and protect the integrity and aesthetic appearance of Shepherds Grove.

B. **Driveways.** All driveways shall be concrete and be maintained and replaced so as to preserve the same appearance of the drive as provided at the time of original installation, ordinary wear and tear excepted, unless a different material or appearance, including, but not limited to, colored or concrete pattern design, is submitted to and approved by the Committee in writing before said changes to the driveway material or appearance is made. Concrete driveways shall be a minimum of four inches (4") thick on six inches (6") of compacted stone from the garage to the edge of the street pavement. Rock, stone, asphalt, gravel, grass, or dirt driveways are expressly prohibited in the subdivision.

An Owner wishing to modify his driveway by installing a textured concrete surface or a colored concrete or coated surface to his driveway must submit the colors and specifications of the driveway modification to the Committee in writing and receive written approval from the Committee in advance of the installation. Each Lot's driveway shall run from the point of connection with the abutting street to the point of connection with the garage apron and shall be totally completed prior to occupancy of the residence. All Tracts/Lots in Shepherds Grove shall be accessed only from the interior street areas of the subdivision.

C. **Mailboxes.** Because mailboxes and posts installed in Shepherds Grove are constructed to serve both Tracts/Dwelling Units in a single Duplex Unit and are consistent in appearance and material, they shall be maintained by the Association to insure consistency in appearance and materials. Any change, alteration or modification the appearance, size, material or location of any mailbox or post in the subdivision is entirely the discretion of the Committee.

D. **Exterior Lighting.** All exterior lighting, including flood, landscape, courtesy, security and other directional lighting, garage coach lights, and post lamps must be submitted in writing to the Committee and receive written approval from the Committee prior to being installed, replaced, repaired, changed or modified.

No exterior lighting shall be directed or pointed outside the boundaries of the Tract/Lot where the lighting is located, and may not be pointed or located in a manner where the lighting creates or causes a nuisance or disturbance to neighboring properties. No permanent overnight lighting shall be allowed in the Development.

Garage coach lights and post lamps must be kept on proper working order and must have a functioning light bulb. Any bulbs that burn out must be replaced by the Owner within seven (7) days.

E. **Fences.** All fencing style, color, location and height shall be generally consistent within the Real Estate. No fence shall be erected on or along any Tract/Lot line, nor on any Tract/Lot, the purpose or result of which will be to obstruct reasonable vision, light or air. No fence shall be erected in or extend onto any portion of the Common Areas or into any

landscape or non-access easements. All owners shall maintain their respective fences in good condition, including repairing any structural defects or signs of deterioration.

Fencing permitted to be used in the Development must be white resin, poly-vinyl, composite or similar composite material, with the exception of deck railing and perimeter fencing around the boundary of the subdivision, which may be wood. Metal, wire, and chain link fencing are strictly prohibited in the subdivision. Barbed wire and electrified fencing (excluding invisible fencing for animals) are also strictly prohibited in the subdivision.

Fences in the Development shall be a maximum of six foot (6') high. For non-corner Tracts/Lots, no fence shall be installed forward of the front foundation of the Dwelling Unit. For corner Tracts/Lots, no fence may be installed forward of, or beyond, the building setback lines. No fence shall be installed within twenty-five foot (25') of the shoreline of any Lake or detention pond. All fences must meet the applicable sight distance requirements set forth under state and local laws.

All fences that are not to be adjoined, or connected, to neighboring fences shall be set back a minimum of eighteen inches (18") from each Tract/Lot line, and they must also meet any regulations and/or set back requirements for fences as established by state or local law, this Declaration, or any rule or regulation adopted pursuant to this Declaration. Any Owner(s) on adjoining, or neighboring, Tracts/Lots that wish to erect any fences that are to be connected, joined or shared, on one or more sides, by those Tracts/Lots must submit in writing a request for approval for such adjoining fence signed by each Owner of a Tract/Lot where the adjoining fences will be placed or maintained. This request must be included with the written architectural request submitted to the Committee.

The Committee also reserves the right to grant a variance of any limitation in this fence guideline upon written request by the Tract/Lot Owner and under facts or circumstances that would cause an undue hardship upon the Tract/Lot Owner and reasonably supports the granting of the variance request. The Committee also has the absolute right to determine under what conditions and what requirements it deems appropriate for the granting of a variance.

The Committee reserves the right to set reasonable rules, regulations and guidelines regarding fencing in addition to the requirements set forth herein, including, but not limited to, the allowance of wood fencing or the use of wood panels or screens between adjoining Dwelling Units, Tracts or Lots.

This provision shall not be applied retroactively regarding any fence installed prior to this amendment's effective date except in situations where a violation of local ordinance is involved.

- F. **Accessory Structures / Storage Barns or Sheds.** All accessory structures, including, but not limited to, storage sheds, mini-barns, garages, and carports, whether attached or detached from the main Dwelling Unit structure, are expressly prohibited within the subdivision; except that the Committee may allow gazebos, pergolas, and play structures if they receive prior written approval from the Committee.
- G. **Decorations, Exterior Displays and Similar Items.** No decorations and exterior displays, including, but not limited to, exterior sculptures, statues, fountains, garden ponds, bird baths, ornament, decorative flags, banners, wall hangings, lawn and patio furniture, garden fences, boulders/rocks, flower pots/containers, trellises, decorative screens, arbors and like items, to be hung, displayed, placed or erected on the outside of any windows or doors, the outside walls, or the lawn of any Dwelling Unit or Tract/Lot may be displayed, placed or erected on any Dwelling Unit or Tract/Lot unless the Owner

obtains the prior written approval for the item from the Committee. If approved, all items must be kept in a good state of repair at all times. For purposes of this provision, the term "decorative flag" includes all flags except for American flags.

- H. **Pools.** No on-ground or above-ground swimming pool shall be installed or erected upon any Tract/Lot, including inflatable pools. A pool generally designed for above ground use that is completely or partially buried in the ground shall not be considered an in-ground pool for purposes of this provision. In-ground pools are permitted if the Tract/Lot is large enough to accommodate such a pool.

A spa, hot tub or small one-piece or "kiddie" pool shall not be considered an above ground pool for purposes of this restriction. Before any spa, hot tub or in-ground pool may be installed on any Tract/Lot, the Owner must receive written approval for the installation of the spa, hot tub or in-ground pool, plus fencing, if required, from the Committee. The Committee may consider the location on the Tract/Lot, the size, shape and the potential impact or effect of the proposed spa, hot tub, or in-ground pool on neighboring Dwelling Units or Tracts/Lots when making a decision on whether to approve a proposed request. Fencing, landscaping or screening may be required by the Committee for approval of any submission; however, all in-ground pools must be protected by either 1) a fence or wall that is at least five (5) foot in height, or 2) an electronic slide cover. Whether or not to grant a request is solely the determination of the Committee, and a decision to approve a spa, hot tub or in-ground pool in one instance does not require the Committee to approve a request in another instance, even if the request or facts are similar in nature.

- I. **Basketball Goals and Other Recreational Equipment.** Unless specifically approved by the Committee, no basketball goals, playsets, or other recreational equipment shall be allowed on any Tract/Lot. The Board reserves the right to adopt rules and regulations regarding basketball goals, playsets, and other recreational equipment if it deems necessary and appropriate.

- J. **Holiday Lighting and Decorations.** Holiday lighting and decorations are permitted on all Tracts/Lots, but they may not be displayed more than forty-five (45) days prior to the holiday, and they must be removed within thirty (30) days following the holiday, weather permitting.

- K. **Flags and Flag Poles.** Pursuant to the Freedom to Display the American Flag Act of 2005, and a desire to allow residents in the community to display their patriotism, Owners within Shepherds Grove may display an American flag on their property without prior permission of the Committee, but only if the flag is displayed by following the rules set forth by the United States Code, adopted by the American Legion, or following any other generally accepted rule or custom pertaining to the proper display or use of the American flag.

Prior approval is not required for any Owner wishing to install an angle-mounted flag standard attached to the Owner's Dwelling Unit OR a freestanding flag pole no more than thirty (30) feet in height nor more than four (4) inches in diameter. For all other flagpoles and standards, an Owner must submit a written request and receive written approval from the Committee. No flag pole may be erected within the public right-of-way easement or within any sight line setback provided for in the Declaration. No lighting may be directed on or toward the flag or flag pole without prior written approval of the Committee. An Owner may not display more than one (1) American flag on his

Tract/Lot at the same time without obtaining prior written permission from the Association.

The Committee reserves the right to grant a variance of any limitation in this provision upon written request by the Tract/Lot Owner and under facts or circumstances that would reasonably support the granting of the variance request. The Committee has the sole discretion to determine under what conditions and what requirements it deems appropriate for the granting of a variance. The Committee also reserves the right to adopt additional rules limiting the size and number of American flags that may be displayed by an Owner, if the Committee deems such rules necessary or advisable in the future.

L. **Satellite Dishes and Antennas.** It is the intent and desire of Declarant that the Real Estate be developed in an aesthetically pleasant manner, and that the Dwelling Units constructed on the Tracts/Lots retain a harmonious and consistent appearance. To this end, it is the goal of this provision to limit the installation of any satellite dishes, antennas and aerials on the Tracts/Lots so that such are not visible from the street in front of such Lot.

In accordance with the Federal Telecommunications Act of 1996, and the Federal Communications Commission rules governing Over-the-Air Reception Devices (OTARD), members may only install satellite dishes that are one meter or less in diameter. One meter is equal to 39.37 inches, and "diameter" is the distance measured across the widest part of the dish. Only one dish may be installed upon each Tract/Lot, unless additional dishes are required to receive additional or unique transmissions that cannot be received by a previously installed dish. The Committee reserves the right to require written verification for the installation of additional dishes upon any Tract/Lot.

The OTARD Rule allows Associations to designate a preferential order of placement for dishes in their community. To that end, the Committee desires that satellite dishes be permanently mounted in a location on the Tract/Lot that is the least visible from the street directly in front of the Lot which will not result in a substantial degradation of reception. This priority shall be: 1) in the rear of the Lot; 2) on the side of the Lot or home; and 3) the front of the home, in this specified order. Therefore, an Owner shall install a satellite dish in the rear portion of the Lot if acceptable reception can be received from that location. If acceptable reception cannot be obtained in the rear portion of the Lot, then the dish may be located along the side of the home if adequate reception can be received from that location. If adequate reception cannot be received from a location along the side portion of the home, then a dish may be located in the front of a home. However, if a dish is located in the front portion of a Lot, the Committee reserves the right to request an Owner provide adequate documentation from a reputable dish installation expert that the placement of the dish had to be located in the front portion of the Lot to prevent a substantial degradation of reception. So long as the Owner follows this preferential placement guideline for installation, the Owner does not need to receive prior written approval of the Committee before installing a dish. Within twenty (20) days from the installation of a Satellite Dish or Antenna, an Owner shall notify the Association of such installation. Such notice shall indicate the item installed, the approximate location on such Tract/Lot, and that such installation meets the standards contained in this provision regarding placement and location.

After a dish is installed, if the Committee believes or determines that the device could have been installed in another location on the Tract/Lot less visible from the street directly in front of the Dwelling Unit, or that the Owner did not comply or follow the preferred placement order when installing the satellite dish, then the Committee reserves the right to require the Owner to move the dish to another location less visible from the street, or to seek the removal of the dish from its location, so long as the relocation of the

dish does not substantially impact or degrade the reception of the device. For example, if an Owner locates a dish on the front of his Dwelling Unit, and it is determined that the dish could have been installed in a location on the rear or side of the Dwelling Unit that would have still allowed adequate reception, then the Committee may require the Owner to move the dish, at the Owner's expense, to this less visible location.

In addition, the Committee reserves the right to require landscaping, fencing or other screening around the dish to hide it from direct view of the street, or to cover or paint the dish to make it more acceptable in appearance to its surroundings, so long as none of these changes or screenings impair the reception of the device. If an Owner fails to install or make the improvements or modifications requested by the Committee, then the Association reserves the right to enter upon the Owner's Tract/Lot upon ten (10) days prior notice and make said improvements or modifications, the expense of which shall be added to the Owner's account. The ten (10) day notice provided to the Owner shall set forth the specific work to be performed. If an Owner objects to or prevents the Association from making such improvements or modifications, then the Association reserves the right to seek injunctive relief for the removal of the dish.

Other antennae, aerials or devices, towers or radio antennae that are not covered by the OTARD rule, such as dishes larger than one (1) meter in diameter and ham or amateur radio antennas are prohibited on any Tract in the Real Estate. The Committee reserves the right to adopt rules or make changes to the requirements of this provision as allowed by or required by any changes or amendments to the Federal Telecommunications Act of 1996.

M. **Solar Panels and Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Tract without the prior written approval of the Committee. The Committee may deny any request for solar panels and other energy conservation equipment unless the Committee, as determined in the sole discretion of the Committee pursuant to the provisions of the Declaration or these Rules, determines said equipment can be installed as an integral and harmonious part of the architectural design of the home and surrounding dwellings.

Roof top solar panels must be located on the rear roof of the house and not visible from the public street in front of the home. Panels must be properly maintained in appearance and shall not be allowed to become cloudy, rusted, cracked, faded, or in any other condition that may detract from the appearance of the home or impact the desirability or value of the adjacent homes. Fence mounted solar panels are strictly prohibited. Ground mounted solar panels will be approved only if they are hidden or obscured by fencing or other acceptable foliage.

N. **Utility Lines.** No overhead utility lines, including lines for telephone, electrical and cable, shall be permitted within the Real Estate, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes. Utility cables, including cable lines, shall be installed along the sides of the home and buried in the yard in a manner so that the lines are not visible to other residences in the neighborhood.

O. **Drilling.** No oil or water drilling, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water, or natural gas shall be erected, maintained, or permitted on any Lot.

- P. **Field Tiles.** Any field tile or underground drain which is on any Lot must be allowed to perpetuate.
- Q. **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of the local authorities and this Declaration.
- R. **Storage Tanks.** No storage tanks including, but not limited to, those used for the storage of water, gasoline, oil, other liquid or other gas shall be permitted on any Lot outside a building except for portable LP tanks used for outside cooking.
- S. **Sump Pumps and Drains.** Sump pumps, gravity drains and other drains serving individual residences on Lots shall outfall on grass surface no closer to roads than the building setback line and a minimum of ten (10) feet from the drainage swales. No sump pump, gravity drain, or other drain serving an individual Lot shall outfall in any side or front yard (forward of the rear foundation line of the residence) of any Lot unless so required by state or local code and approved by the Committee.

Section 4. Owner's Obligations.

- A. **Maintenance.** It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly, or unkempt condition on his or her Tract. All Owners shall perform routine and necessary maintenance to their Tract, Dwelling Unit and all improvements thereon as set forth in this Declaration or the rules and regulations adopted by the Association to maintain a reasonable appearance and to avoid the Tract, Dwelling Unit or improvements from becoming unsightly in relation to the appearance of other Units and improvements in the neighborhood, including, but not limited to, painting; mold or mildew abatement or cleaning; wood repair; front door and garage door repair; siding repair; roofing repair; window and porch screens and window repair; driveway, sidewalk, porch, patio or other exterior concrete repair.

For purposes of this section, the Association shall have the sole right and discretion to determine whether the condition or appearance of a Tract, Dwelling Unit or improvement reasonably constitutes an "unsightly or unkempt" condition or appearance when compared or considered in relation to the condition or appearance of the other Tracts, Dwelling Units and/or improvements in the Shepherds Grove subdivision as a whole.

- B. **Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage or any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers, or other machines or equipment. There shall not be

maintained any plants or animals or device or thing of any sort whose activities or existence is in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

- C. **Occupants Bound.** All provisions of the Declaration, Articles, Bylaws and any rules and regulations or use restrictions which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Tract to comply with the Declaration, Articles, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Tract are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

Section 5. General Prohibitions

- A. **Signs.** No signs of any kind shall be placed or displayed on any Tract, or within any home windows, without the written consent of the Board. No business signs, flags (except the American Flag), banners or similar items shall be erected or displayed on any Tract by an Owner. If permission is granted to an Owner to place or display a sign, including name and address signs within the Real Estate, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

The following signs are permitted without prior approval of the Committee, subject to the following requirements or limitations:

- (1). One (1) sign, no larger than six (6) square feet shall be allowed on a Tract at any given time advertising the property for sale. No "For Sale" signs may be placed or located in the Common Areas;
- (2). One sign, no larger than six (6) square feet, advertising improvements being made to a Tract or Dwelling Unit will be allowed for a maximum of seven (7) days only;
- (3). Garage Sale signs, one sign no larger than six (6) square feet, professionally printed, advertising or promoting a garage or yard sale being held on the property may be posted at the front entrance no more than twenty-four (24) hours in advance of the sale, and one sign no larger than six (6) square feet, professionally printed, may be placed in the front yard of the Tract hosting the sale. Smaller, directional arrow signs, professionally printed, strategically placed to guide people through the Development to the location of the sale are also permitted. All such signs must be removed the same day the sale ends;
- (4). Open House signs, one sign no larger than six (6) square feet, professionally printed, advertising or promoting an "Open House" being held on a property may be posted at the front entrance no more than forty-eight (48) hours in advance of the Open House, and one sign no larger than six (6) square feet, professionally printed, may be placed in the front yard of the Tract hosting the Open House. Smaller, directional arrow signs, professionally printed, strategically placed to guide people through the Development to the location of the Open House are also permitted. All such signs must be removed the same day the Open House ends;
- (5). Temporary signs (i.e. yard cards), professionally manufactured, no larger than ten (10) square feet, displayed for the specific purpose of celebrating a birthday, anniversary, or other special occasion will be allowed for a maximum of seventy two (72) hours. These signs may be located on the Owner's Tract or at the

entryway of the subdivision;

- (6). Political signs, no larger than six (6) square feet, promoting a political candidate displayed on a Tract will be allowed beginning four (4) weeks prior to the primary or election date and are to be removed within one (1) day following the primary or election date.
- (7). Activity signs, no larger than four (4) square feet, professionally produced, celebrating or supporting a child or resident of the property in a school activity (i.e. cheerleader, soccer player, band member, etc. lives here). The sign must be located within ten (10) feet of the front door or entry area of the residence. The Board reserves the right to grant a variance of this limitation if the owner has more than one student in school at the same time;

Under no circumstances shall any sign advertising or promoting any business, advertising or offering any Lot or Tract for sale, or promoting the sale or development of any Lot or Tract within the Real Estate, except as permitted herein, be allowed on any Lot, Tract, public right-of-way, easement, common area or other portion of the Real Estate without the prior written approval of the Board. No signs displaying any message or depiction that may be considered lewd, offensive or provocative speech under local community standards shall be displayed on any Lot in the Development. The Board reserves the right to enter upon any Tract or other portion of the Real Estate to remove any sign placed or displayed in violation of this provision, or a sign that was previously approved by the Board, but permission has subsequently been withdrawn or expired.

B. Nuisances. No noxious, unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall any lot or property be used in any unlawful manner or in any manner that might cause nuisance, annoyance, inconvenience or damage to any other Owner and/or occupant of a Tract in Shepherds Grove or any neighboring property, including, but not limited to, noise by the use of loud speakers, electrical equipment, amplifiers or other equipment or machines, animal barking or noises, or a loud person or group of people, and any objectionable odors. Any violation of this restriction shall constitute a nuisance which may be abated by the Association. The cost or expense of abatement, including court costs and attorneys' fees, shall constitute a special assessment against such Tract and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed hereunder.

C. Vehicles / Parking.

1. Passenger Vehicle Parking. Pursuant to the Declaration, all vehicles belonging to members of a household shall be parked in the garages or on the driveways serving the Tract. Parking on the streets within the Development by Owners is prohibited except as allowed by the Board as herein provided. In order to be reasonably flexible to the necessities of Owners, the Board may periodically allow limited special exceptions to this restriction for such things as parking on the street because contractors, service providers or guests are parked in the driveway on a temporary basis; service or work on the Dwelling Unit or Tract requires the vehicles to be removed from the garage and/or driveway area; boats or campers parked in the driveway or street for the purpose of loading or unloading for a trip; garage sales; etc. It shall be within the sole discretion of the Board to determine what situations

are considered a limited special exception, and the allowance of an exception for one Owner does not obligate the Board to recognize a special exception for another Owner under similar circumstances. However, it should be noted that this power to allow limited special exceptions does not include the power to allow routine, regular or habitual parking on the streets by Owners.

In addition, Owners are encouraged to have their guests park in the Owner's driveway while visiting whenever possible; nevertheless, an Owner's guests and visitors may temporarily park (less than twelve (12) consecutive hours) on the street for a period not to exceed twenty four (24) hours when necessary. However, this exception to street parking shall not include any vehicles parked on the street on a frequent (in excess of twenty four (24) hours per month) basis. In the event that guest vehicle(s) are parked on the street according to the limitations of this provision, vehicles may be parked on one side of the street only. Vehicles shall not be parked directly across the street from other vehicles, or on both sides of any street.

No camper, trailer of any kind, mobile home, recreational vehicle, truck, motorcycle, boat or jet-ski, snowmobile, bus, dune buggy, mini-bike or moped, race car or other similar vehicles of any kind may be parked on any street or on any Tract in the Real Estate unless such vehicle or trailer is kept in an enclosed garage and out of public view. For purposes of this restriction, the term "truck" does not include pickup trucks up to one (1) ton (i.e. basic pickup truck), full size vans and/or sport utility vehicles.

No semi-tractor, semi-trailer, semi-tractor/trailer combo, box style, non-pickup style trucks, or other similar vehicles shall be permitted in the Real Estate, except for vehicles or commercial vehicles that are temporarily present for the sole purpose of performing or providing moving, routine home maintenance or health care services. Vehicles that display company logos or advertisements must be parked in the garage of the residence only and out of public view.

2. **Inoperative or Disabled Vehicles** No inoperative, disabled, unregistered or unlicensed vehicle shall be parked, stored, or repaired anywhere in Shepherds Grove in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair unless such repairs are done in an enclosed garage. For purposes of this section, "inoperative" includes any vehicle that has not been noticeably moved by its owner for a period of three (3) weeks or longer; any vehicle that has a block or other device under the tires to prevent movement or rolling; or any vehicle which has not been driven or moved under its own power for a period of sixty (60) days or longer. For purposes of this section, "unregistered" and "unlicensed" includes any vehicle that does not display a valid license plate as required by law.

3. **General Parking Restrictions** No vehicles of any kind may be parked for any length of time on any portion of the grass, yard, or other non-paved area within the Shepherds Grove Development, including the Tracts.

No vehicles of any kind may be parked on any court, cul-de-sac or round portion of any drive or street in the Development except on a temporary or non-recurring basis.

No vehicles of any kind may be parked on any Tract or street that would block or interfere with the use of any driveway, sidewalk, access and/or use of any mailbox, or would block or restrict vehicular traffic on any street in the

Development, including, but not limited to, school buses and emergency equipment.

Any vehicle parked or stored on any street or common area within Shepherds Grove in violation of any of the above rules or prohibitions shall be subject to towing at the discretion of the Association, and any expenses incurred by the Association for said towing shall be borne by the Owner of the vehicle thereof, including any collection costs, attorney fees or expenses. The Association shall not be responsible for any damage or loss to any Owner or vehicle resulting from the towing of a vehicle violating this parking restriction.

4. **Traffic Regulation and Sight Distance at Intersections.** All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem or violate any local ordinance. All vehicular traffic on the private streets and roads in the Real Estate shall be subject to the provisions of the laws of the State of Indiana, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is also hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic within the Real Estate. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including the towing of vehicles parked on the streets in the Development. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Real Estate. All vehicles of any kind and nature which are operated on the streets in the Real Estate shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Real Estate.

D. **Garbage, Trash, and Other Refuse.** All trash, rubbish, garbage or other waste shall be regularly removed from a Tract, and shall not be allowed to accumulate thereon. All trash, rubbish, garbage or other waste shall be kept in sanitary containers. All trash containers and equipment used for the storage or disposal of trash, rubbish, garbage or other waste shall be kept clean and shall be stored in an enclosed garage, except that all such trash containers may be placed outside the evening before scheduled trash pick-up and remain outside until the evening of the day of scheduled trash pick-up. By way of example and to clarify the requirements of this rule, no Owners or residents shall store any trash container, bag, or other type of waste container beside the garage, the driveway, the front porch, or any other area where the container, bag or waste container is visible from any other Lot. The Association reserves the right to adopt further rules regarding trash and other refuse storage on Lots in the subdivision.

E. **Outside Storage.** Except for construction materials and equipment used by the builder/contractor during the construction or modification of a residence on a Lot, all construction materials and equipment, lawn equipment and similar items shall be stored at all times, when not in use, in the Owner's garage. Should mulch, plant material, sand, wood, rock, or other project materials need to remain outside the Dwelling Unit or garage for more than one (1) consecutive week, the Owner must seek approval from the Committee. Items that are delivered to a Lot for improvements, including, but limited to, such items as landscaping mulch, rock, or wood, cannot be deposited or unloaded in any

street in the neighborhood. Any materials that are left unattended on any street in the neighborhood may be removed at the Owner's expense by the Association.

- F. **Clotheslines.** No clotheslines or other outside drying or airing facility shall be permitted in the subdivision.
- G. **Animals.** No animals, livestock or poultry of any kind, including, but not limited to, cows, pigs, horses chickens, goats, sheep, ducks, geese, or other exotic animals and pot-bellied, or Vietnamese, pigs, shall be raised, bred or kept on any Tract, except that dogs, cats or other customary household pets may be kept on a Tract, provided that such pet is not kept, bred or maintained for any commercial purpose and does not create a nuisance, including but not limited to foul odor or unreasonable noise, to any other Tract Owner or resident. No Owner shall feed or perform any other act that encourages or promotes wild animals or waterfowl, including, but not limited to, geese and ducks, from using, landing or feeding on any portion of the Real Estate, including the Common Areas. Any Owner feeding wild animals or waterfowl may be held responsible for any destruction caused to the Common Areas by said animals or for any expense incurred by the Association to repair damage caused by said animals or to deter said animals from continuing to use, land, or feed on the Real Estate.

Pets shall be taken outdoors only under leash or other restraint and while immediately attended by the Owner. The tying, chaining, roping, or tethering of pets on any Tract or other area of the Development without the Owner present does not constitute "attended." Dog houses, dog runs, and kennels and/or chain link cages are strictly prohibited in the Development.

An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by the Owner's pet. The Owner shall be responsible for the cleaning of any Common Area or public right-of-way soiled by his pet's excrement, and shall be fully liable for the expenses of any cleaning performed by the Association because the Owner failed to clean up after his pet.

Any pet which, in the sole discretion and judgment of the Board, is a dangerous animal, or is causing or creating a nuisance, unreasonable disturbance or noise, property damage, or loss of enjoyment to a resident or a resident's property in the Development, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to so remove said animal is mailed to the respective Owner via first class mail. If an Owner fails to remove a pet after being requested to do so by the Board, the Association may pursue injunctive relief through a court of competent jurisdictions to have the pets permanently banned from the Real Estate. A "dangerous animal" is one that has bitten or attacked a resident in the Development, or when unprovoked, has chased or approached a person upon that person's private property, or upon the streets, sidewalks, or any public grounds in the Development, in a menacing fashion or an apparent attitude of attack.

The Board may adopt further rules and regulations regarding pets as it deems necessary or appropriate.

- H. **Hunting, Fishing and Trapping.** Hunting, fishing and trapping are prohibited on any part of the Real Estate.
- I. **Firearms.** The discharge of firearms is prohibited on any part of the Real Estate. The term "firearm" includes bows and arrows, slingshots, "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary

contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

- J. **Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling, or on any Tract, or on any of the Common Areas, which will cause the cancellation of insurance or an increase in the rate of insurance applicable to any Common Area, nor shall anything be done or kept by an Owner in any Dwelling, or on any Lot, which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- K. **Prohibition Against Granting Other Easements.** Without the prior written approval of the Board of Directors of the Association, an Owner shall not grant any easements to any third party, including public utility companies, political subdivisions, or governmental authorities, for the purposes of providing water, sanitary sewer or storm water drainage for a property other than such Owner's Tract.
- L. **Laws and Ordinances.** Every Owner and occupant of any Tract or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action enforce such laws, statutes, ordinances and rules.

Section 6. Self-Help Maintenance and Abatement. If any Owner, or his family, guests, invitees, servants, or agents, fails or refuses to comply with any of the requirements or restrictions of the Declaration or any rules or regulations adopted by the Association, then the Association, or any of its designated agents, shall have the right, but not the obligation, to enter upon any Tract to perform maintenance, mowing, repair, or other acts as may be reasonably necessary to make such Tract and any improvements thereon conform to the requirements of the Declaration or any rules or regulations adopted by the Association, or to abate or remove any violation of the Declaration or any rules or regulations adopted by the Association from the Tract.

The Association, or its agents, shall not be liable to the Owner for any damages resulting from the work performed hereunder unless it can be shown that the damages resulted from an act of gross negligence or willful or reckless misconduct.

The expense of said action shall be the responsibility of the Owner of the Lot committing or necessitating the action. The cost of the Association's corrective action shall become part of the Owner's account and treated as a Special Assessment against the Owner and Lot and/or Tract, and there shall be lien against the Lot and/or Tract for these expenses, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association may take appropriate action to collect any unpaid amounts, including sending notice letters and/or filing suit to recover such amounts, and there shall be added to any unpaid amounts any reasonable attorney fees and costs of collection incurred by the Association.

Section 7. Right of Entry. All Owners and Occupants of a Dwelling Unit or a Tract shall be deemed to have granted the right of entry thereto to the Association, the managing agent, or any other person authorized by the Board in case of any emergency originating in or threatening his Dwelling Unit or Tract, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter his Dwelling Unit or Tract for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, to make structural repairs or to perform any other service or maintenance on any portion of the Dwelling Unit or Tract that is required pursuant to the duties and responsibilities of the Association as outlined in this Declaration; provided that requests for entry are to be made in advance and that such entry is made at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

Section 8. Rules and Regulations. The Board shall have the authority to promulgate, adopt, revise, amend, and alter from time to time such additional rules, regulations, and guidelines governing the use, occupancy, operation and enjoyment of the Tracts, Lots, Common Areas and any facilities or other improvements located thereon, and any other portion of the Real Estate, including any publically dedicated streets, and the personal conduct of the Members and guests thereon, as in the sole discretion of the Board are deemed necessary or advisable.

These rules, regulations and guidelines may impose restrictions or obligations upon the Owners and their guests in addition to, or as a supplement to, those set forth in the Declaration herein; provided, however, that those rules, regulations or guidelines may not be in conflict with any other provision set forth in the Declaration. The rules, regulations or guidelines may also determine or list certain activities or improvements that an Owner may install or perform that are considered automatically approved by the Committee without the need to seek further written approval of the Committee.

These rules, regulations and guidelines shall be as applicable and enforceable as any other provision within the Declaration, and enforcement of any rule, regulation or guideline adopted by the Board shall be in the same fashion as any other provision set forth in the Declaration.

Further, any rule, regulation or guideline promulgated or adopted hereto may be repealed or modified by a two-thirds (2/3) vote of the Tract Owners of the Association cast at a special meeting held for that specific purpose (for clarification, this is a 2/3 vote of ALL Tract Owners, NOT a 2/3 vote of the Owners in attendance at the special meeting).

Any such rule, regulation or guideline shall be recorded in the Office of the Johnson County Recorder, and the Board shall cause copies of such rules, regulations and guidelines, and all amendments thereto, to be delivered or mailed to each Tract Owner within thirty (30) days of said rule, regulation or guideline being recorded.

ARTICLE XV

DURATION AND AMENDMENT OF DECLARATION

Section 1. Duration. This Declaration shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Johnson County, Indiana and running with the land for a period of fifty (50) years from the date of said recording, after which time they shall be automatically extended for successive periods of twenty (20) years each unless by unanimous vote of the Owners it is agreed to terminate the provisions of this Declaration.

Section 2. Amendment. Notwithstanding the foregoing, changes or amendments to any provision(s) in this Declaration, except as set forth in Section 3 herein, may be made at any time within ten (10) years of the date this Declaration is recorded by vote of those persons who are then the Owners of ninety percent (90%) of the Lots in the Development and who are in good standing. Between years ten (10) and twenty (20) after this Declaration is recorded, an amendment must be approved by seventy-five percent (75%) of the Owners in good standing. After twenty (20) years from the date this Declaration is recorded, an amendment must be approved by a majority of the then Owners in good standing. For purposes of this provision, "good standing" shall mean Lot Owners whose voting rights have not been suspended under any of the provisions set forth in this Declaration.

Approval for an amendment to this Declaration under this provision may be obtained:

- (i) at a meeting of the Members of the Association duly called and held in accordance with the provisions of the Association's Bylaws, or

- (ii) by mail, door-to-door collection or electronic balloting. Any ballot submitted via mail or door-to-door collection must contain the printed name of the Owner, the Owner's signature, and indicate how the Owner wishes to vote on each designated issue being voted upon. Any ballot submitted via electronic means must contain the name of the Owner, a properly designated or issued confirmation or security number, and indicate how the Owner wishes to vote on each designated issue being voted upon; or
- (iii) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as may be amended.

To ensure all Owners are given an opportunity to vote on any proposed amendment, the Association shall send to all Owners a ballot regarding any proposed amendment. This ballot shall be sent by first class, postage pre-paid, U.S. Mail to the Owner's last known mailing address. A ballot shall be sent to each Owner regardless of whether a special meeting of the members is held to address or vote on a proposed amendment.

Once adopted, each amendment shall be executed by the President and the Secretary of the Association, certifying that the requisite number of Lot Owners in the Development who are in good standing approved such amendment. Thereafter, the amendment shall be recorded in the office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.

No amendment to this Declaration may be made by any person or entity without the approval of the membership as set forth in this Article.

Section 3. Special Amendments. Notwithstanding anything to the contrary contained herein, amendments to the following provisions of this Declaration shall always require a vote of those persons who are then the Owners of ninety percent (90%) of the Lots in the Development and who are in good standing: i) Article VI, Section 1 (Common Area maintenance by Association); ii) Article VII (Architectural Control); iii) Article IX, Section 2 (Liability for Assessments); iv) Article XI, Section 2 (Requirement that Association maintain insurance coverage); and v) Article XIV, Section 1(C) (Rental Restrictions).

In addition, the Board may record amendments to this Declaration without the approval of the membership to: i) correct typographical or scrivener's errors; and ii) to bring this Declaration into compliance with any federal, state or local law or ordinance.

Section 4. Amendments with Declarant's Approval. Notwithstanding anything to the contrary contained herein or in the Bylaws, no amendment of the Declaration shall be made without the consent and approval of the Declarant until such time that Declarant no longer owns or holds title to any Lot in the Development.

ARTICLE XVI



ACCEPTANCE AND RATIFICATION

Section 1. In General. All present and future Owners, mortgagees, contract purchasers, and occupants of the Real Estate, and other persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Plats, the Articles, the Bylaws and the rules and regulations as adopted by the Board or Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance, the acceptance of a mortgage, the execution of a contract, or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Plats, the Articles, the Bylaws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, mortgagee, contract purchaser, or occupant, and all such provisions shall be covenants running with the land and shall bind any person

having at any time any interest or estate in the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or contract. All persons who may own, occupy, use, enjoy or control any part of the Real Estate in any manner shall be subject to this Declaration, the Plats, the Articles, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVII.

NEGLIGENCE

Section 1. In General. Each Owner shall be liable for the expense of any maintenance, repair or replacement to any part of the Common Area, exterior of a Dwelling Unit or Lot which is maintained by the Association which is rendered necessary by the Owner's negligence or by that of any member of his family or his occupants or guests, employees, agents, or invitees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in the Association's insurance premiums occasioned by his use, misuse, occupancy or abandonment of the Common Areas, any Lot or Dwelling Unit in the Development.

ARTICLE XVIII.

ENFORCEMENT

Section 1. In General. Any party to whose benefit this Declaration inures, including the Association, the Committee, or any individual homeowner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, or any rule, regulation and/or guideline adopted thereto, but neither the Association or Committee shall be liable for damages of any kind to any person for failing to enforce or carry out any of the provisions of this Declaration.

Section 2. Delay or Failure to Enforce (Non-Waiver Clause). No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of this Declaration, or any rule, regulation or guideline of the Association, shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of the Declaration, or any rule, regulation or guideline of the Association. Likewise, no delay or failure of any party to enforce any particular provision of the Declaration, or any rule, regulation or guideline of the Association shall be deemed a waiver or an estoppel of that party to enforce another provision of the Declaration, or any rule, regulation or guideline of the Association.

Section 3. Costs and Attorney Fees. In the event the Association or Committee retains attorneys or engages in civil proceedings in order to enforce the terms and provisions of this Declaration, or the Articles, the Bylaws, or the rules, regulations, guidelines and standards adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action, proceeding or litigation without the necessity of proving any actual damages to the Association or its members, obtaining a court order of injunctive relief, including those cases when the alleged violation is corrected by the Owner following the filing of a lawsuit but before judgment is entered on the matter, or securing compliance by any other method of due process for any structure, improvement, act or omission that is not in compliance with the covenants, conditions

and restrictions contained herein. The Association, or Owner, bringing an action is also entitled to reimbursement for any legal expenses incurred in gaining an Owner's compliance with any provision in this Declaration, the Bylaws or the rules and regulations of the Association, regardless of whether an actual lawsuit is ultimately filed against the Owner. (For example, and not by way of limitation, the Association is entitled to recover any legal expenses incurred to have a violation letter sent to an Owner to compel compliance, even if the violation is subsequently corrected and a lawsuit is not filed.) Damages or expenses incurred by the Association relating to the prosecution of a violation of these covenants shall be a personal obligation of the Owner determined to be in violation of any of these covenants, and an Owner cannot avoid liability to the Association for reimbursement of these damages and expenses by subsequently selling his interest in the property before a factual or final determination regarding the validity of the violation is made by any court of competent jurisdiction. Any costs and/or expenses incurred by the Association as the result of a proceeding against a Owner for violation of these covenants that is not recovered from the Owner may be distributed via a pro-rata distribution to all Owners in the Development in the next fiscal budget.

ARTICLE XIX

MISCELLANEOUS

Section 1. Waiver. No Owner may exempt himself from liability for Regular Assessments or Special Assessments by waiver of the use or enjoyment of any of the Common Areas or Limited Common Areas or by abandonment of his Lot.

Section 2. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law.

Section 3. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 4. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the sole opinion of the Board, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. If any conflict exists or is found to exist between the provisions of this Declaration and any other recorded Declaration or Plat for this Development, the provisions of this Declaration shall control. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, I, the undersigned, do hereby execute this Amended and Restated Declaration of Covenants for Shepherds Grove and swear, affirm or certify, under penalties of perjury, the truth of the facts herein stated and that all legal requirements for amending the Declaration, as set forth in Section 37 of the Declaration, have been met this 12th day of JANUARY, 2009.

SHEPHERDS GROVE HOMEOWNERS ASSOCIATION, INC.

Elbert W. Martin
Elbert W. Martin
President

ATTEST:

Karen Anderson
Karen Anderson
Secretary

STATE OF INDIANA)
COUNTY OF JOHNSON)

Before me a Notary Public in and for said County and State, personally appeared Elbert W. Martin and Karen Anderson, the President and Secretary, respectively, of Shepherds Grove Homeowners Association, Inc., who acknowledged execution of the foregoing Amended and Restated Declaration of Covenants for Shepherds Grove and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal of this 12th day of JANUARY, 2009.

Donna G. Glass
Notary of Public -- Signature

STAMP:

DONNA G. GLASS
Printed

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



This instrument prepared by and should be returned to:
Scott A. Tanner, TANNER LAW GROUP, 6745 Gray Road, Suite H, Indianapolis, IN 46237

CHICAGO TITLE

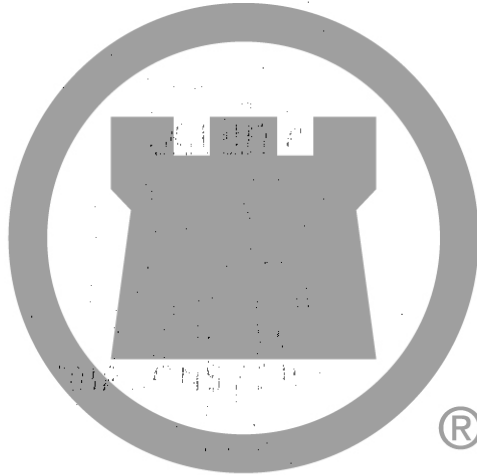
EXHIBIT A

LEGAL DESCRIPTIONS FOR THE PROPERTIES

IN

SHEPHERDS GROVE

(SECTIONS 1 & 2)



CHICAGO TITLE

Final Plat Shepherds Grove, Section 1

Part of the Northeast 1/4, Section 02, Township 13 North, Range 3 East
White River Township, Johnson County, Indiana

I, Stephen E. Bourquein, Indiana Registered Land Surveyor #S0441, hereby certify that I am a registered professional land surveyor in the State of Indiana, that this plat correctly represents a division of a parcel of land represented by a survey prepared by Franklin Engineering, dated February 27, 1972, and certified by Daniel L. Murray, of a part of the Northeast 1/4 of Section 2, Township 13 North, Range 3 East, of the Second Principal Meridian, White River Township, Johnson County, Indiana, more particularly described as follows:

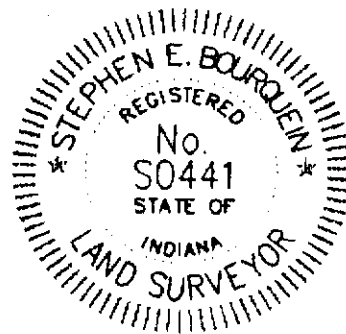
Commencing at the Northwest corner of said Northeast 1/4, said point as represented by said survey, said point being in the center of Smith Valley Road; thence North 90 degrees, 00 minutes, 00 seconds East (assumed bearing per said survey), along the North line of said Northeast 1/4 and in said Smith Valley Road, 434.36 feet to the northwest corner of said parent parcel as defined per said survey, said point being the POINT OF BEGINNING; thence continuing North 90 degrees, 00 minutes, 00 seconds East, along said North line, along the north line of said parent parcel and in said Smith Valley Road, 794.72 feet, to the northeast corner of said parent parcel; thence South 00 degrees, 39 minutes, 51 seconds West, along an east line of said parent parcel, 65.00 feet; thence North 90 degrees, 00 minutes, 00 seconds West, 436.01 feet; thence South 00 degrees, 39 minutes, 51 seconds West, 150.01 feet; thence North 90 degrees, 00 minutes, 00 seconds West, 14.27 feet; thence South 00 degrees, 00 minutes, 00 seconds West, 50.17 feet; thence South 00 degrees, 39 minutes, 51 seconds West, 169.59 feet; thence North 81 degrees, 09 minutes, 28 seconds West, 15.15 feet; thence South 00 degrees, 39 minutes, 51 seconds West, 374.31 feet; thence North 88 degrees, 55 minutes, 08 seconds East, 75.00 feet; thence South 01 degrees, 04 minutes, 52 seconds East, 140.00 feet; thence South 88 degrees, 55 minutes, 08 seconds West, 8.45 feet; thence South 01 degrees, 04 minutes, 52 seconds East, 190.00 feet, to a point on the southerly line of said parent parcel; thence South 88 degrees, 55 minutes, 08 seconds West, along said southerly line, 406.75 feet, to a southwest corner of said parent parcel; thence North 00 degrees, 39 minutes, 51 seconds East, along the westerly line of said parent parcel, 143.14 feet, to the POINT OF BEGINNING, containing 10.0731 acres (438,785.55 square feet), more or less, subject to all easements, highways, rights-of-way and restrictions of record.

I, further certify that all monuments shown thereon actually exist, and that their location, size, type and material are accurately shown; and that the computed error of closure of the boundary survey is not more than one foot in ten thousand feet; and that this plat complies with provisions of the Subdivision Control Ordinance.

This subdivision contains 25 lots numbered 1 through 14, and 34 through 45 and two parcels of land denoted as Canyon Area 1a and 1b (all inclusive). The locations and dimensions of the Lots, Streets, and Easements are shown on the Plat, and in dimensions shown denoting feet and decimal parts thereof.

Witness my hand and seal this 8th day of June 2002.

Stephen E. Bourquein,
Indiana Registered Land Surveyor #S0441



I, PAUL MAURER, HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA, AND I DO HEREBY FURTHER CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED HEREIN AND THAT I HAVE SUBDIVIDED THE SAME INTO LOTS AS SHOWN ON THE HEREIN DRAWN PLAT. THIS PLAT CORRECTLY REPRESENTS SAID SURVEY AND SUBDIVISION.

LEGAL DESCRIPTION
SHEPHERD'S GROVE - SECTION TWO

A part of the Northeast Quarter of Section Two, Township 13 North, Range 3 East of the Second Principal Meridian located in White River Township, Johnson County, Indiana being more particularly described as follows:

COMMENCING at the Northwest Corner of said Quarter Section, thence North 90 degrees 00 minutes 00 seconds East (Assumed Basis of Bearings) along the North line of said Quarter 1229.08 feet to the Northwest Corner of the land of Anderson, recorded as Instrument Number 91009419, in the Office of the Johnson County Recorder; thence South 00 degrees 39 minutes 51 seconds West along the West line of said Anderson 65.00 feet to the Southerly Right-of-Way of Smith Valley Road, said point also being the POINT OF BEGINNING of the herein described parcel; thence continuing South 00 degrees 39 minutes 51 seconds West along said West line 203.06 feet to the Southwest Corner of said Anderson; thence North 89 degrees 59 minutes 18 seconds East along the South line of said Anderson 162.50 feet to the West line of the land of Taylor, recorded as Instrument Number 92012265, in said Office of the Johnson County Recorder; thence South 00 degrees 22 minutes 56 seconds West along said West line 856.92 feet; thence South 88 degrees 55 minutes 08 seconds West 555.06 feet to the Southeast Corner of Shepherds Grove - Section One, recorded in Plat Book "D", Pages 422 "A & B", in the Office of the Johnson County Recorder; the next ten (10) courses follow the Eastern boundary of said Shepherds Grove - Section One, 1) North 01 degrees 04 minutes 52 seconds West 190.00 feet; 2) North 88 degrees 55 minutes 08 seconds East 8.45 feet; 3) North 01 degrees 04 minutes 52 seconds West 140.00 feet; 4) South 88 degrees 55 minutes 08 seconds West 75.00 feet; 5) North 00 degrees 39 minutes 51 seconds East 374.31 feet; 6) South 81 degrees 09 minutes 28 seconds East 15.15 feet; 7) North 00 degrees 39 minutes 51 seconds East 169.67 feet (169.59 feet platted); 8) North 00 degrees 00 minutes 00 seconds East 50.00 feet; 9) North 90 degrees 00 minutes 00 seconds East 14.27 feet; 10) North 00 degrees 39 minutes 51 seconds East 150.10 feet (150.01 feet platted) to said Right-of-Way of Smith Valley Road; thence North 90 degrees 00 minutes 00 seconds East along said Right-of-Way 436.01 feet to the Point of Beginning, containing 13.89 acres, more or less.

Subject to all easements, restrictions and rights-of-way.

THIS SUBDIVISION CONTAINS THIRTY-THREE (33) LOTS NUMBERED FIFTEEN (15) THROUGH THIRTY-FOUR (34), AND FORTY-SIX (46) THROUGH FIFTY-EIGHT (58) (INCLUSIVE); TOGETHER WITH STREETS, RIGHTS-OF-WAY AND EASEMENTS AS SHOWN ON THE PLAT HEREWITH.

ALL MONUMENTS SHOWN HEREON WILL EXIST, AND THEIR LOCATION IS ACCURATELY SHOWN; AND THIS PLAT COMPLIES WITH PROVISIONS OF THE SUBDIVISION ORDINANCE. THE SIZE OF LOTS AND WIDTH OF STREETS AND EASEMENTS ARE SHOWN IN FIGURES DENOTING FEET AND DECIMAL PARTS THEREOF.

CERTIFIED THIS 14th DAY OF SEPTEMBER, 2007.

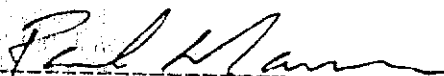

PAUL MAURER
REG. LAND SURVEYOR NO. 880006
STATE OF INDIANA

EXHIBIT B

MEMBER BALLOTS

APPROVING

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS



116 TOTAL UNITS

95 "YES" Votes (82 %) and 6 "NO" Votes (5 %)

CHICAGO TITLE

BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?

YES AS IS Israel Fischman
 NO

~~with the exception of Article II Insurance Sections 1-6~~ Fischman

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

1/2/2009
Date

Israel Fischman
Signature
Israel Fischman
Printed Name

751 Shepherds Way
Address
Greenwood, IN 46143

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared ISRAEL FISCHMAN and Restrictions of Shepherds Grove, who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the Shepherds Grove community and are mandatory members of the Shepherds Grove Homeowners Association, Inc., and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 2ND day of JANUARY, 2009

My Commission Expires:
5-4-2011

Sharon L. Norris
Signature

County of Residence:
JOHNSON

SHARON L. NORRIS
Printed

CHICAGO TITLE

BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

- 1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?
- YES NO

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

1-8-09
Date

Richard V Kinzel
Signature

3366 LUKES WAY
Address

RICHARD V KINSEL
Printed Name

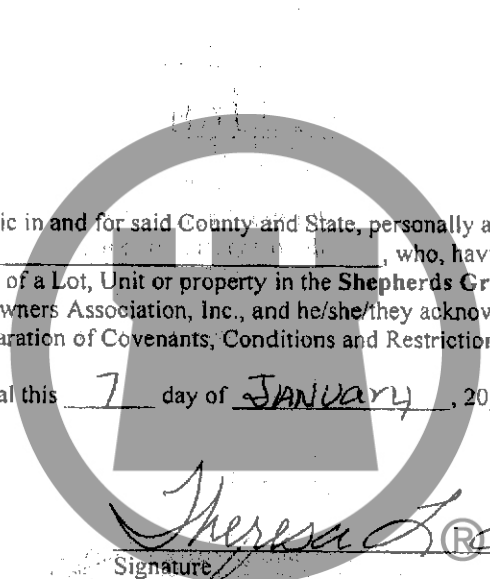
STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard V. Kinzel, who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the **Shepherds Grove** community and are mandatory members of the **Shepherds Grove Homeowners Association, Inc.**, and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 7 day of JANUARY, 2009.

My Commission Expires:
August 31, 2013

County of Residence:
JOHNSON



Theresa L. Locke
Signature

Theresa L. Locke
Printed

CHICAGO TITLE

BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

- 1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?
- YES NO

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

1/2/09
Date

Ebert W. Martin
Signature

3435 Luke's Way
Address

Ebert W. Martin
Printed Name

Greenwood, IN 46143

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ebert W. Martin, who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the **Shepherds Grove** community and are mandatory members of the **Shepherds Grove Homeowners Association, Inc.**, and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 2 day of Jan, 2009.

My Commission Expires:
1-14-16

County of Residence:
Johnson

Christene A. Schulteis
Signature

Christene A. Schulteis
Printed



CHICAGO TITLE

NOTARY PUBLIC
STATE OF INDIANA
My Commission Expires
1-14-16

BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

- 1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?
- YES NO

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

1-6-09 Paul R. Fordyce 793 Shepherds Way
 Date Signature Address
PAUL R. FORDYCE GREENWOOD, IN. 46143
 Printed Name

STATE OF ~~INDIANA~~ Florida
 COUNTY OF ~~JOHNSON~~ Sarasota)SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Paul R. Fordyce, who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the **Shepherds Grove** community and are mandatory members of the **Shepherds Grove Homeowners Association, Inc.**, and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 6 day of Jan, 2009

My Commission Expires:

Aug 2 2010

County of Residence:

Sarasota

Kristina Michelle Burch
 Signature

CHICAGO TITLE



BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?

YES NO

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

1/5/09
Date

Carolyn Hickman
Signature

724 SHEPHERDS WAY
Address

CAROLYN HICKMAN
Printed Name

GREENWOOD, IN 46143

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Carolyn Hickman, who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the Shepherds Grove community and are mandatory members of the Shepherds Grove Homeowners Association, Inc., and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 5 day of January, 2009.

My Commission Expires:
5-4-2013

[Signature]
Signature

County of Residence:
Marion

Christy B. Duncan
Printed

CHICAGO TITLE



NOTARY PUBLIC
STATE OF INDIANA
My Commission Expires
5-4-2013

BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

- 1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?
- YES NO

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

1/5/2009
Date

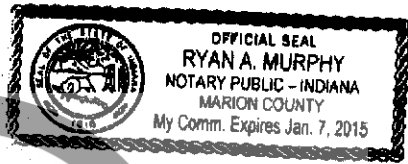
Janie S. Humphrey
Signature

739 Shepherds Way
Address

Janie S. Humphrey
Printed Name

Greenwood, IN 46143

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)



Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Janie S. Humphrey and Restrictions of State, who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the Shepherds Grove community and are mandatory members of the Shepherds Grove Homeowners Association, Inc., and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 5 day of January, 2009.

My Commission Expires:
1/7/2015

County of Residence:
Marion

Ryan A. Murphy
Signature

Ryan A. Murphy
Printed

CHICAGO TITLE

... of said County and State
... of said County and State
... of said County and State

BALLOT

I certify that I am an owner of a Tract/Lot within the Shepherds Grove subdivision and I vote as follows on the Proposed Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

- 1.) Should the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove be approved?
- YES NO

This ballot shall be valid and must be used within a period of eighteen (18) months from the date of this ballot.

Jan 5, 2009
Date

Richard D. Nitti
Signature

809 Shepherds Way
Address

RICHARD D. NITTI
Printed Name

809 Shepherds Way

STATE OF INDIANA)
)SS:
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard D. Nitti who, having been duly sworn, under the penalties of perjury, stated that he/she/they are Owners of a Lot, Unit or property in the **Shepherds Grove** community and are mandatory members of the **Shepherds Grove Homeowners Association, Inc.**, and he/she/they acknowledge the execution of the foregoing Ballot regarding the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Shepherds Grove.

Witness my hand and Notarial Seal this 5 day of January, 2009.

My Commission Expires:

11/20/2009

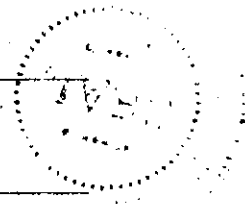
County of Residence:

Johnson

Amanda M. Annis
Signature

Amanda M. Annis
Printed

CHICAGO TITLE



...County and State...
...Restrictions of Shepherds Grove...
...Unit or property in the...
...of Shepherds Grove...

