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MORGAN COUNTY RECORDER 63F
PAMELA KIVETT Time 10:29:05
PJD Date 12/31/2009 140.00
RECORDING: Page 1 of 63
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Cross-Reference:
St. John Commons (Plat), Instrument #20104978 (Slide 1471-3)
St. John Commons Covenants, Instrument #20013067 (Book 163, Page 392-402)
St. John Commons Amendment to Covenants, Instrument #20207393

REVISED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
ST. JOHN COMMONS

THIS REVISED AND RESTATED DECLARATION OF COVENANTS, CODITIONS AND RETSRICTIONS FOR ST. JOHN COMMONS, dated December 30, 2009, is hereby adopted and executed by TODD H. BURNS, ROGER D. HICKEY and DONALD E. POYNTER, the collective and individual Developers (hereinafter "Developer") of the St. John Commons Development.

RECITALS:

WHEREAS, Developer is the purchaser and owner of lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof (the "Real Estate").

WHEREAS, Developer has subdivided, or intends to subdivide, the Real Estate for development of St. John Commons, a single family housing development in Morgan County, Indiana, as is more particularly described on the plats recorded, or to be recorded, in the Office of the Recorder of Morgan County, Indiana (the "Plats").

WHEREAS, Developer recorded a document titled St. John Commons Covenants (hereinafter "Original Declaration"), recorded in the office of the Morgan County Recorder on September 27, 2000, as **Instrument #20013067 (Book 163, Page 392-402);** amended by the Amendment to Covenants of St. John Commons Subdivision (hereinafter "Amended Declaration"), recorded in the office of the Morgan County Recorder on April 25, 2002, as **Instrument #20207393.**

WHEREAS, pursuant to the Original Declaration, the Developer retained the sole right to make amendments to the Original Declaration and to include in any other instrument made thereafter additional covenants or restrictions to those already contained in the Original Declaration.

WHEREAS, pursuant to the Original Declaration, the restrictions contained in the Original Declaration may be modified, changed or eliminated at any time by the due recording of an instrument executed by the owners of a majority of the total lots in all subdivisions constituting St. John Commons,

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which instrument changes, modifies or eliminates these covenants and restrictions.

WHEREAS, there are a total of seventy (70) lots in St. John Commons Development, and the Developers collectively currently hold title to at least forty-three (43), or a majority, of the lots in the Development;

WHEREAS, the Developer has deemed it desirable to revise and restate the covenants and restrictions of the Original Declaration in order to better preserve the value and appearance of the lots within St. John Commons.

WHEREAS, the Developer, in their collective and/or individual capacity and as the representative of a majority of the lot owners in St. John Commons, has created and executed this Revised and Restated Declaration of Covenants, Conditions, and Restrictions for St. John Commons (hereinafter "Declaration"), which is to replace and supersede the Original Declaration, Amended Declaration, and all other previously recorded Declarations, if any, for St. John Commons.

WHEREAS, Developer desires to subject and impose upon all real estate within the platted areas of the Real Estate to the terms of this Declaration as provided herein, the mutual and beneficial restrictions, covenants, conditions and charges contained herein contained and as set forth in the Plats under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Real Estate made subject to this Declaration and the future owners thereof.

NOW, THEREFORE, Developer, by execution of this Declaration, states that all properties which are part of the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which shall run with the Development and each Lot therein, and shall be binding upon all parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof subject to this Declaration, and their heirs, successors and assigns, and shall inure to the benefit of Developer's successors in title and each Owner in the Real Estate.

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ARTICLE XVI

GENERAL PROVISIONS

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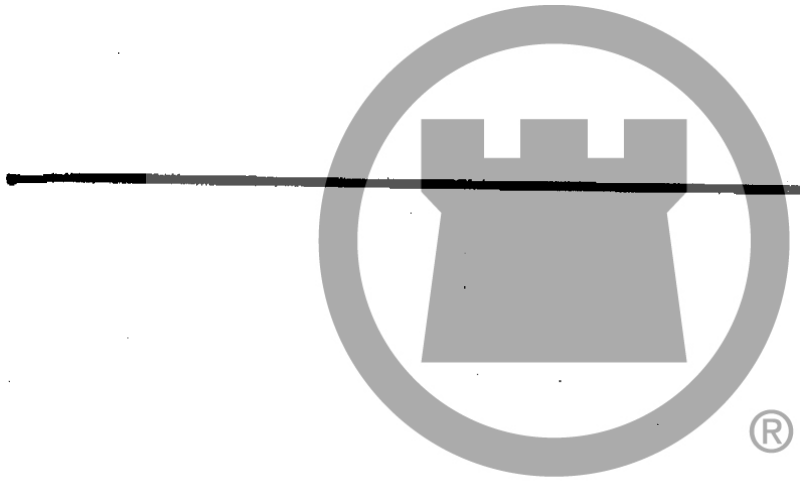

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REVISED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
ST. JOHN COMMONS

ARTICLE I

DEFINITIONS

Section 1.1 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) "*Applicable Date*" shall mean and refer to the date as set forth in Article IV, Section 4.3, of the Declaration.

b) "*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.

c) "*Association*" or "*Corporation*" shall mean and refer to St. John Commons 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.

d) "*Assessment*" shall mean and refer to any charge against a Lot, including any late fees, interest, reasonable attorney fees, costs, or other charges provided for within the terms of this Declaration, imposed pursuant to the provisions of this Declaration;

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

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

g) "*Committee*" shall mean the Development Control Committee which shall be appointed by the Board and have such duties as provided in Article VI, below.

h) "*Common Area(s)*" shall mean those areas and all improvements located thereon that are 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. Common Areas shall include, but not be limited to, common private roadways and streets in the Development, entry gates, guardrails, picnic areas, boat ramp(s) constructed or placed in common areas, levees, lakes, and the lake dam. Common Areas do not include the ponds located on lots 51 and 52, and the pond, including any dam or other improvements to the pond, located on lots 54, 58, and 59.

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i) "*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, 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.

j) "*Declaration*" shall mean and refer to the Revised and Restated Declaration of Covenants, Conditions, and Restrictions of St. John Commons, and any amendments or supplements thereto recorded thereafter, in the Office of the Recorder of Morgan County, Indiana;

k) "*Developer*" shall mean and refer to Todd H. Burns, Roger D. Hickey and Donald E. Poynter, both collectively and individually, and their successors and assigns, if such successors and/or assigns become same by operation of law, or should (i) such successors and/or assigns acquire all or substantially all of the Lots from Todd Burns, Roger Hickey and Donald E. Poynter, for the purpose of development, and (ii) any such assignee receives by assignment from Todd Burns, Roger Hickey and Donald E. Poynter, all or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights of Developer to such assignee. No person or entity purchasing one or more Lots from Todd Burns, Roger Hickey and Donald E. Poynter in the ordinary course of business shall be considered as "Developer";

l) "*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;

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

n) "*Dwelling Unit*", "*Residence*" or "*Home*" shall mean and refer to all levels or stories of the single family dwelling constructed on a Lot;

o) "*Easement Area*" shall mean any portion of the Real Estate which is subject to an easement as more particularly described in this Declaration;

p) "*Lake*" or "*Lakes*" shall mean and refer to the water detention pond(s) or lake(s), whether or not such are also a Common Area, together with the shoreline area thereof, as shown on the Plats.

q) "*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) residential Dwelling Unit. The term Lot shall be deemed to include the Dwelling Unit, if any, located thereon.

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

s) "*Owner*" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any Lot, 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. In addition, the term "Owner" does not include anyone renting or leasing a Lot, nor does the term include any person who is acquiring or purchasing a right, title or interest, legal or equitable, in a Lot by means of land contract, rent to own, lease to own, or other similar agreements until record title is actually transferred to such purchaser;

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t) "*Plat*" shall mean and refer to any and all subdivision Plats or Plans for the St. John Commons development approved by the Town of Morgantown, Indiana, or other appropriate agency, and recorded in the Office of the Recorder of Morgan 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;

u) "*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;

v) "*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;

w) "*Resident*" shall mean any resident of a deeded Lot who is not an Owner of said Lot who shall be required to follow and comply with all Covenants and Restrictions.

x) "*St. John Commons*" 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.

y) "*Tract*" 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;

Section 1.2. 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

DEVELOPMENT OF THE REAL ESTATE

Section 2.1. Development of the Real Estate. All Lots shall be and hereby are restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Developer, including without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and (e) additions or changes to the boundaries of any Common Areas or Easement Areas.

Section 2.2. Private Streets and Entry Gates. The streets and rights-of-way shown on the Plats within the Development are private ways that are property of the Association and reserved for the exclusive use of the Owners and their residents, families and guests. An access and use easement for the private streets is perpetually agreed to and acknowledged by each Owner within the Development to run with the land herein and in favor of each and every Owner within the Development, along with their residents, families and guests. So long as the streets in the Development remain private, entry gates may be installed to limit access to the streets in the Development to owners, occupants and guests. However, any decision to install entry gates limiting public access to the roads within the subdivision must be approved by at least two-thirds (2/3) of all Owners within St. John Commons.

The maintenance, repair and replacement of the private streets and entry gates, if any, shall be the responsibility of the Association. For the safety and welfare of all residents in St. Johns Commons,

there shall be a twenty-five mile per hour (25 mph) speed limit on all private streets within the subdivision.

In addition, the residents may decide that they would like for the streets in St. John Commons to become public rights-of-way. So long as the municipality agrees to accept the private roads as publicly dedicated thoroughfares, the residents may dedicate the streets as public rights-of-way. However, any decision to dedicate the roads as public rights-of-way must be approved by at least two-thirds (2/3) of all Owners within St. John Commons.

Section 2.3. Levees and Dam. As reserved on the Plat, there are areas on Lot 44 in the development, said Lot being designated as common area, that are hereby reserved for the construction and maintenance of levees and/or a dam. The maintenance, repair and replacement of the levees and dam shall be the responsibility of the Association. Any streets, roads or rights-of-way located or constructed across this levee and dam area shall be reserved for the exclusive use of lots 42, 43, 44, 45, 46, 69, and 70.

Section 2.4. Development of Additional Property. Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration. This option may be exercised by Developer in accordance with the following rights, conditions, and limitations:

(a) Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Developer's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

(b) The option to add additional real estate may be exercised by Developer by the execution of a Supplemental Declaration or Plat describing such additional real estate, which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the additional real estate. The provisions of this Declaration shall then be construed as embracing the real property described in "Exhibit A" and such additional real estate so submitted to the terms hereof, together with all improvements located thereon.

Section 2.5. Annexation of Additional Real Estate by Members. After the Development Period, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provision of the Bylaws dealing with regular or special meetings, as the case maybe, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section and to ascertain the presence of a quorum at such meeting.

Section 2.6. Withdrawal of Property. Developer hereby reserves the right and option during the Development Period, to be exercised in its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Developer from the control and provisions of this Declaration. Such removal by Developer shall be carried out generally by the execution

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and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

Section 2.7. Taxing District. At some time subsequent to the initial development, it may be necessary to provide for the financing of the maintenance, repair and replacement of the roadways, levees, dam or other needs within St. John Commons by creating a conservancy or special taxing district. If such a conservancy or special taxing district is created, it shall include all original lots in St. John Commons, and each owner hereby agrees to execute any petition circulated for the purpose of creating such a conservancy or special taxing district and will vote in favor of the creation of a such a district in any referendum called for that purpose.

Each owner shall pay any such special assessments as may be levied against his lot by such conservancy or special taxing district and shall take the necessary steps as required by the appropriate state, county and township agencies to comply with the requirements of the conservancy or district.

ARTICLE III

PROPERTY RIGHTS AND EASEMENTS

Section 3.1. 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, tenant 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, the execution of a lease or the act of occupancy of any part of the Real Estate, shall accept such deed, accept such mortgage, execute such contract, execute such lease 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 Developer and the Association with respect to this Declaration 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. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to each and every provision of this Declaration.

Each Owner shall automatically become a member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided by Owners and the boundaries between Lots and between the Real Estate and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Developer.

Section 3.2. 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:

(a) 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

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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.

(b) 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.

(c) 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.

(d) 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.

(e) If any portion of the Common Areas are located within the platted and/or dedicated public rights-of-way, the public may have rights of use and enjoyment of the Common Areas located within the public rights-of-way;

(f) The right of Developer or the Association to adopt rules and regulations governing the use, operation and maintenance of the Common Areas;

(g) The right of Developer or 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, or any rule or regulation adopted pursuant thereto, except that an Owner's use of the private roadways and dam cannot be suspended at any time;

(h) With respect to any and all portions of the Common Properties, Developer, until Developer 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 Town of Morgantown or any other governmental agency having appropriate jurisdiction over the Common Properties) to: (i) alter, improve, landscape and/or maintain the Common Properties; (ii) employ or utilize construction and/or engineering measures and activities of any kind or nature whatsoever upon or within the Common Properties; (iii) zone, rezone or seek and obtain variances or permits of any kind or nature whatsoever upon or within the Common Properties; (iv) replat or redesign the shape or configuration of the Common Properties; and (v) seek and obtain any and all permits, licenses or exemptions from any and all governmental agencies exercising jurisdiction over the Common Properties and/or the uses or activities thereon.

(i) 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.

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Section 3.3. Easement for Developer.

A. During the Development Period, the Developer shall have an easement for access to the Real Estate, including any Lot 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 by this Declaration or as the Developer desires, in its sole discretion, 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, provided in no event shall the Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether the Developer at that time retains ownership of a Lot, the Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as the Developer deems appropriate, provided that the Developer shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.

B. In addition to the easement set forth above, the Developer hereby retains, 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 Developer under this Section shall be transferable by the Developer to any person or entity solely at the option and benefit of the Developer, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. The Developer 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 Developer and others to whom the Developer may grant such similar or lesser easements, rights or privileges, may so use any 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 Developer, its successors and assigns 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 3.4 Drainage & Utility Easement or Drainage, Utility & Sewer Easement (DUE or DUSE).

A. There is hereby reserved for the benefit of the Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any service or utility providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas; and (ii) those portions of all Lots designated on the Plat as "DUE" or "DU&SE" and as otherwise are reasonably necessary (such areas herein referred to collectively as the "Utility

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Easement Areas") for installing, replacing, repairing, and maintaining public utilities reasonably or conveniently required, such as gas lines, ducts, water mains, laterals or lift stations, electric, telephone or cable lines. Unless otherwise noted on the Plat, there is a ten foot (10') wide utility easement along each side and rear property line of each Lot; and a fifteen foot (15') wide utility easement along the front property line (street side) of each Lot.

The Developer, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems shall be made by the Developer in accordance with the rights reserved to the Developer under the terms of this Declaration. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

B. The Developer hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be required or appropriate from time to time by such governmental authorities under applicable law.

C. There shall be created sanitary sewer easements in those areas designated on the Plat which easements shall run in favor of the Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

Section 3.5. Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate. Unless otherwise noted on the Plat, there is a ten foot (10') wide drainage easement along each side and rear property line of each Lot.

Each Owner shall take title subject to the rights of others to use the natural ravines, swales and valleys of the Real Estate for the conveyance of storm water. The Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat or defined in this Declaration) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to this area by the Owner without the written consent of the applicable governmental agency; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

In addition, any drainage toward the front (street side) of the Lot may require a swale across

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the full width of the front of the property. This swale shall be a minimum of three feet (3') from the road bed, and should be complimented with a culvert to allow driveway entrance to the property. Driveway culverts are to be constructed of pre-cast concrete, galvanized steel pipe or aluminum pipe and must be sufficient to handle normal traffic loads or meet applicable zoning or building standards.

Section 3.6. Drainage and Lake Maintenance Easements. As noted on the Plat, there is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and maintenance, repair, and upkeep of the entire Lake, including an area extending at least fifteen (15) feet horizontally outward from the high water elevation of the Lake.

As noted on the Plat, there shall also be reserved an easement for the benefit of Developer, the Association, and/or the owners of lots 51 and 52, and their respective successors and assigns, for access to and maintenance, repair, and upkeep of the pond situated on lots 51 and 52, said easement including the entire pond and an area extending at least fifteen (15) feet horizontally outward from the normal water elevation of the pond.

No changes shall be made to this area by any Owner without the written consent of the applicable governmental agency and the Developer or Association; provided, however, that Developer and Association, in its sole discretion, may make any changes it deems necessary. No permanent structures shall be erected or maintained upon said drainage and lake maintenance easements.

Section 3.7. Drainage and Dam Maintenance Easements. As noted on the Plat, there is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and maintenance, repair, upkeep, and replacement of the drainage system, including, but not limited to, surface drainage, dam or levee construction, and/or appropriate underground installations, as provided for on Lot 44 of the Real Estate.

No changes shall be made to this area by any Owner without the written consent of the applicable governmental agency and the Developer or Association; provided, however, that Developer and Association, in its sole discretion, may make any changes it deems necessary. No permanent structures shall be erected or maintained upon said drainage and dam maintenance easements.

Section 3.8. Landscape Easements. Landscape Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such arc in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to an LE which does not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

Section 3.9. Access Easement. There may be strips of grounds as shown on the Plats marked Access Easement which are created and reserved for: (a) the use of the Developer during the Development Period for access to the Common Area or the Lake; (b) the nonexclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lake; and (c) the construction of a roadway, including side ditches. There shall be a specific Access Easement running through lots 42, 43, 44, 45, 46, 69, and 70. It shall be the responsibility of the Association to maintain this Access Easement area, and any improvements thereon, including any private roadway installed thereon.

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Section 3.10. Emergency Access Easement. As noted on the Plat, there is a strip of ground marked Emergency Access Easement (E.A.E.), which is created and reserved for use by lots 41, 42, and 43, only during those times when the Access Easement across those lots and running east to Poynter Drive is blocked or obstructed due to maintenance, repair or construction of the road or dam. The Owner of any Lot which is subject to the EAE shall be required to keep the portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

Section 3.11. Easement to Erect Dam. As noted on the Plat, there shall be an easement to erect a dam and submerge land on lots 54, 58, and 59 per the terms set forth in an agreement recorded as Deed Record 143, Page 260 in the Office of the Recorder of Morgan County, Indiana.

Section 3.12. Easement to Use Pond. As noted on the Plat, there shall be an exclusive easement for the use of the pond located on lots 51 and 52. This easement permits lots 51 and 52 to use the pond for their exclusive recreational use and for non-motorized boating.

Section 3.13. Fiber Optic Line Easement. As noted on the Plat, there shall be a fiber optic line easement located on or across lots 53, 54, 55, 58 and 59. This easement shall be reserved for the installation and maintenance of fiber optic lines.

Section 3.14. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, security, ambulance and other emergency vehicles and any utility or other service vehicles for the use of the private roadways and Common Areas within the Development. An easement is also 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 3.15. 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 Developer, 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 Developer may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

Section 3.16. Maintenance Easement. There is hereby reserved and created for the use of Developer, 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 and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

Section 3.17. Easement to Association. Developer 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 3.18. 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

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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.

Section 3.19. Waiver of Easements. The easements set forth in the Article may be waived by the Association when an Owner of two (2) adjoining Lots is constructing one (1) home across the adjoining Lots and it is necessary to waive the easements along the adjoining property lines to accommodate the construction of the home.

ARTICLE IV

ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS

Section 4.1. 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 4.2. Membership in Association. Each 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.

When two (2) or more adjoining Lots are purchased or owned by the same Owner, the adjoining Lots remain two (2) Lots in accordance with this Declaration. Property Owners of such Lots shall be allowed only one (1) vote per Dwelling Unit, or home, but shall be responsible for assessments equal to the same number of Lots owned. For example, if an Owner owns two (2) Lots, but builds one (1) home on those Lots, then that Owner shall have one (1) vote in Association matters, but shall be required to pay two (2) assessments (one for each Lot).

Section 4.3. 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 Lot 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 Lot 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 Lot.

(b) **Class B Membership.** Class B Members shall be the Developer and all successors and assigns of Developer specifically designated in writing by Developer as Class B Members. Each Class B Member shall be entitled to ten (10) 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; or (ii) at such time as the Development Period expires.

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Section 4.4. 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.

Section 4.5. Transition of Control of Association. The Developer 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 Developer shall 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 Developer or Developer'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 meeting, the Developer 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 is 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 Developer deems necessary or appropriate in the operation of the Association.

Section 4.6. Interim Advisory Committee. The Developer may, in its sole discretion, establish and maintain until such time as Developer shall transfer control of the Association pursuant to the terms of this Declaration, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) The Advisory Committee shall serve as a liaison between the Owners (other than the Developer) and the Association, and advise the Association from time to time during such period; (b) The Advisory

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Committee shall consist of three (3) members, each of whom must be an Owner (other than Developer, or an officer, director or employee of Developer); (c) The members of the Advisory Committee shall serve without compensation. The Advisory Committee shall be elected for a term of one (1) year by the Owners (other than Developer) at a meeting thereof called for such purpose; and (d) The Owners (other than Developer) may remove any member of the Advisory Committee with or without cause, and elect a successor at a meeting thereof called for such purpose.

Section 4.7. 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 Area as designated in this Declaration. 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 the Articles and/or Bylaws 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 4.8. Board of Directors. The Board of Directors of the Association shall be as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association. The Initial Board of Directors shall be appointed by the Developer and shall manage the affairs of the Association until the Applicable Date.

Section 4.9. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

ARTICLE V

MAINTENANCE

Section 5.1. Maintenance.

A. The Association shall maintain and keep in good repair the Common Area. The maintenance of the Common Area shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to any insurance provisions contained herein, at the Association's sole cost and expense as Common Expense, of all trees, fences, shrubs, grass, private streets and roadways, guardrails, entry gates, parking spaces, bike paths, walks, Drainage System

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improvements, the accent or special effect lighting system, signage for the Development including street signage, lakes, the Lake Dam, and other improvements situated upon the Common Area.

B. In the event that the Board of Directors of the Association determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within thirty (30) days from the date of such notice; provided, however, that if the same is not capable of completion within the thirty (30) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

C. The cost of snow removal and landscaping maintenance in excess of budgeted amounts shall be paid by the Owners by a Special Assessment. In the event the Association enters into contracts for snow removal and landscaping maintenance while Developer controls the Association, the Association shall indemnify and hold Developer harmless from all liability and obligations with respect thereto. This Section is included herein in recognition of the fact that the costs of snow removal and landscaping maintenance for the Development may substantially exceed amounts budgeted therefore by the Association due to inordinate snow fall, an inordinate number of snow falls during any season, general weather conditions, agricultural conditions and amount of use. Nothing contained herein shall be construed to require that the Association provide snow removal service for the Development. In the event snow removal service is to be provided for the Development an amount therefore shall be included in the annual budget and collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefore is insufficient to defray the actual snow removal costs.

ARTICLE VI

REAL ESTATE TAXES; UTILITIES

Section 6.1. 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 and included in the Assessments against each Lot in the manner hereinafter provided.

Section 6.2. 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 and included in the Assessments against each Lot.

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ARTICLE VII

ASSESSMENTS

Section 7.1. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Real Estate and promoting the health, safety, and welfare of the Owners, users, and occupants of the Real Estate and, in particular, 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 as designated in this Declaration.

Each Owner, except the Developer(s), hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special assessments fixed, established, and determined from time to time, as hereinafter provided.

While the Developer(s) are free to contribute to the maintenance and upkeep of the Development as they see fit, the Developer(s) are hereby excluded and exempt from paying assessments to the Association for any Lots it may own; except that the Developer(s) hereby covenants and agrees to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section and the aggregate amount of the annual assessments collected by the Association.

Section 7.2. Liability for Assessment. Each Owner of any Lot 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, taxed 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 Owners on an equal, or pro-rata, basis; and shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessments is 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 was 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.

Section 7.3. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Real Estate ("Pro-rata Share").

Section 7.4. Annual Assessments. 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 annual assessment sufficient to cover all anticipated expenses for the coming fiscal year together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Common Areas and any other expenses or obligations designated in this Declaration. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association. Such budget shall serve as the basis for establishing the annual assessments. However, the failure of the Board to deliver a

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copy the annual budget to the Owners before the beginning of the fiscal year does not act to invalidate the annual budget adopted by the Board or to excuse any Owner from paying the annual assessments as set in the annual budget.

Section 7.5. Special Assessments. Should the Board at any time during the fiscal year determine that the annual assessment levied against each Lot with respect to that year are insufficient to pay the Common Expenses for that year, the Board may, at any time, levy a special assessment in an amount the Board deems necessary for meeting the Common Expenses for that fiscal year.

A special assessment may be levied for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for in the annual budget or by the annual assessment. In addition, a special assessment may be used for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, including, but not limited to, the private roads or Lake Dam, which the Association may from time to time incur.

Notwithstanding the foregoing provisions of this Section, the Board of Directors may approve any special assessment set forth herein without the approval of the members, so long as the amount of the special assessment does not: a) exceed fifty percent (50%) of the amount of the annual assessment for the year in which the special assessment is approved (i.e. if the annual assessment is $400/lot, a special assessment up to $200/lot may be approved by the Board without member approval); and b) does not involve an amount that is to be assessed against each Lot beyond the current fiscal year. The Board may only approve one (1) such special assessment in any fiscal year without the approval of the members.

If the Board determines that a) a special assessment larger than fifty percent (50%) of the current annual assessment is required; b) a special assessment that extends beyond the current fiscal year is desired by the residents or is necessary in order to obtain a loan or special financing on a capital improvement, construction, reconstruction, repair or replacement project; or c) more than one special assessment is needed in one (1) fiscal year, then the Board shall call a special meeting of the Association to consider imposing such special assessment. A special assessment which is a) larger than fifty percent (50%) of the current annual assessment; b) that extends beyond the current fiscal year; or c) is the second or more special assessment in the same fiscal year, shall be imposed only with the approval of a majority of all eligible Owners 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 approved by the Members that provides for the special assessment to be levied against the Lots over a fixed period of time.

Section 7.6. Reserves. The annual assessments shall include reasonable amounts, as determined by the Board of Directors, collected as reserves for the future periodic maintenance, repair, and replacement of the Common Areas as designated in this Declaration, including, but not limited to, the private roads and dam located in St. John Commons. 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 commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of annual or special assessments.

Every five (5) years, the Board shall cause a comprehensive reserve study of the Common Areas to be performed or 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.

Section 7.7. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be set in the Code of Bylaws and may be changed from time to time by action of the Board. The liability of an Owner for assessments under this Declaration shall commence as

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of the date such Owner acquires his interest in a Lot. The annual 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. Annual 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 installments.

Section 7.8. Duties of the Association Regarding Assessments.

A. The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) as set forth in this Declaration, the Articles or the Bylaws of the Association.

B. The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess a reasonable administrative fee for such certificate.

C. The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the Bylaws or this Declaration which is not cured within sixty (60) days.

Section 7.9. Failure of Owner to Pay Assessments; Remedies of Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid 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 Lot, binding upon the then Lot Owner, his heirs, devisees, successors, and assigns. The personal obligation of the then 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 Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his 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. 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, no Owner who becomes 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, pursuant to the provisions set forth in the Declaration, Articles, or Bylaws.

Section 7.10. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that

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fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

Section 7.11. Subordination of Association's Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a 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 Annual 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 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 Annual Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Annual 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 Lot from which it arose).

ARTICLE VIII

MORTGAGES

Section 8.1. Notice to Corporation. Any Owner who places a first mortgage lien upon his/her Lot or such mortgagee or an insurer or guarantor of a first mortgage lien upon a Lot (hereinafter such mortgagee, insurer or guarantor referred to as a "Mortgagee"), shall notify the Secretary of the Association 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 8.2. Notice of Certain Actions and Conditions. The Association shall, upon request of a Mortgagee who has furnished the Association 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 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 Association which affects any Lot on which there is a first mortgage; and

(d) any proposed action which would require the consent or approval of Mortgagees.

Section 8.3. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed Mortgagee or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of a Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid Assessments or charges in excess of the amounts set forth in such statement.

Section 8.4. 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 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 Association.

ARTICLE IX

INSURANCE

Section 9.1. Insurance.

A. The Association's Board of Directors, or its duty authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Areas against loss or damage by fire, flood or other disaster or hazard, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

B. The Board shall also obtain a public liability policy covering the Common Areas, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Member or agents. The public liability policy shall have at least a Five Hundred Thousand Dollar ($500,000) single person limit as respects bodily injury and property damage, a One Million Dollar ($1,000,000) limit per occurrence, and a Two Hundred Fifty Thousand Dollar ($250,000) minimum property damage limit. Premiums for all insurance on the Common Areas shall be Common Expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

C. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

(1). All policies shall be written with a company licensed to do business in Indiana.

(2). All policies on the Common Areas shall be for the benefit of the Owners and their mortgagees as their interests may appear.

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(3). Exclusive authority to adjust losses under policies in force on the Development obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(4). In no event shall the insurance coverage obtained and maintained by the Associations' Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(5). All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons.

(6). The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) That no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(iv) That no policy may be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(v) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) That no policy may be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

D. In addition to the other insurance required by this Section, the Board shall obtain as Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Board's best business judgment, but may not be less than three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association

Section 9.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk casualty insurance on such Owner's Lot and structures constructed

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thereon. Each individual Owner further covenants and agrees that in the event of a partial loss of damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The Association may impost more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 9.3 Disbursement of Proceeds. Proceeds of insurance policies written in the name of the Association shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in the payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvement account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(b) If it is determined that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 5.3(a).

Section 9.4 Damage and Destruction.

A. Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Association, the Board of Directors, or is duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Development. Repair or reconstruction, as used in this paragraph means repairing or restoring the Development to substantially the same condition in which it existed prior to the fire or other casualty.

B. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Class B Member and at least seventy-five percent (75%) of the eligible voting Owners shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

C. In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portion of the

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Development shall be restored to its natural state and maintained as an underdeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 9.5 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds, reserve funds or pass a special assessment as permitted in this Declaration to complete the necessary repairs or construction.

ARTICLE X

ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 10.1. Purpose. In order 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 shall be subject to the restrictions set forth in this Declaration. Notwithstanding the foregoing, neither this Article nor Article XI of this Declaration shall apply to the activities of the Developer, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

Section 10.2. Development Control Committee. The Board shall establish a Development Control Committee ("Committee") to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Each member of the Committee shall be an Owner or one of the persons constituting a multiple Owner of a Lot. Members of the Committee may or may not be members of the Board. During the Development Period, the Developer shall have all of the powers and authority of the Committee.

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 shall meet as deemed necessary or appropriate by the members of the Committee, and a majority of the Committee members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee, with prior approval of the Board, 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. Such costs associated with the use of consultants by the Committee shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, alterations or improvements made on or to existing Lots or structures containing Lots and the open space, 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, each Lot 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.

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Section 10.3. Review and Approval Required. No building, structure, fence, wall or other improvement of any kind or nature shall be erected, constructed, placed, altered, changed or modified on any Lot shall be commenced or maintained by an Owner, other than the Developer, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, awnings, walls, fences, exterior lights, fountains, garden ponds, statutes or sculptures taller than three (3) foot or numbering more than three (3) upon any Lot, garages or outbuildings, nor shall any exterior addition to or change or alteration to any Dwelling Unit therein be made (excluding repainting in the original color but otherwise including, without limitation, painting or staining of any exterior surface), 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, size, 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".

Section 10.4. Non-Vegetative Landscaping Approval. To preserve the aesthetic appearance of the Real Estate, no material modification to the grading, excavation, or filling of any Lot shall be implemented by an Owner, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and /or require removal, etc. shall also be applicable to approvals required under this Section.

Section 10.5. 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 automatically deemed DENIED.

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.

Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the Committee shall determine that such plans and specification have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

Section 10.6. Power of Disapproval. The Committee may deny or refuse to grant the architectural request for the any of the following reasons:

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(a) 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;

(b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors;

(c) 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 10.7. 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; provided, that none of these rules, regulations and/or guidelines conflict with any restriction or standard as set forth in this Declaration.

Section 10.8. 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 10.9. 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 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 10.10. 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. 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

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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 10.11. 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 Developer, the Association, the Committee, the 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 Developer, the Association, the Committee, the 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 Developer, the Board, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications.

Section 10.12. Non-Conforming and Unapproved Improvements. The Developer, Committee and/or Association may require any Owner to restore such Owner's 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 makes 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, the Association may, but has no obligation to do so, to cause such restoration, demolition and removal, and then levy the amount of the cost thereof as a special individual assessment against the Lot upon such improvements were commenced or constructed.

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Section 10.13. Building Restrictions. All construction and improvements shall be performed or constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such governmental authorizations and permits as are required by law. The Committee reserves the right to require an Owner to obtain all necessary permits, etc. prior to approving any architectural request submitted by the Owner. No approval by the Committee shall be deemed a waiver of these governmental zoning or building permit requirements. Likewise, no permit or approval by a municipal body shall be deemed a waiver of the architectural approval requirements set forth in this Declaration.

ARTICLE XI

CONSTRUCTION AND USE RESTRICTIONS

Section 11.1. Lot Use

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, except permitted accessory structures, shall be erected constructed upon any Lot except a single-family dwelling residence. Whenever two (2) or more contiguous Lots shall be owned by the same Owner, such Owner shall be permitted to use the two (2) or more Lots as a site for a single Dwelling Unit. However, each Lot shall remain subject to assessments as provided for in this Declaration.

B. **Business Use**. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in the home may conduct business activities within the home 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 home; (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. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section.

Section 11.2. Residential Construction Standards

A. **Diligence in Construction**. Construction of a residence shall be completed within nine (9) months from commencement of construction. Restoration and repair of any residence 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)

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months. If restoration or repairs cannot be commenced within forty-five (45) days or completed within six (6) months, then the 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 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 Residence.** No residence constructed on any Lot shall be occupied or used for residential purposes until a certificate of permanent occupancy has been obtained from the appropriate Morgan County governmental authorities.

C. **Minimum Living Space.** The minimum square footage of living space of one story Dwelling Units, exclusive of porches, garages, or basements, shall be eighteen hundred (1,800) square feet; and the minimum square footage of living space of two-story Dwelling Units, exclusive of porches, garages, or basements, shall be twenty-four hundred (2,400) square feet, with a minimum of eighteen hundred (1,800) square feet on the ground level.

D. **Minimum Front Building Setback.** The minimum front building setback for each lot shall be twenty five (25) feet.

E. **Minimum Rear Building Setback.** The minimum rear building setback for each lot shall be fifteen (15) feet.

F. **Minimum Side Setback.** The minimum side building set back for each lot shall be fifteen (15) feet. This requirement may be waived when an Owner of two (2) adjoining Lots is constructing one (1) Dwelling Unit across the adjoining Lots.

G. **Ground Elevations.** Grading of each Lot shall be done in such a manner to provide positive drainage away from the dwelling. To ensure positive drainage away from the dwelling, the ground shall slope away from the dwelling structure a minimum of one inch (1") per foot for the first six (6) feet from the perimeter of the dwelling's foundation. In addition, it shall be the Lot Owner's responsibility to maintain and comply with all other building and site finish ground elevations and erosion control as finally required and approved by the Morgan County Drainage Board and the Department of Planning and Zoning as evidenced upon the final construction plans for the development of the subdivision.

H. **Dwelling Building Height.** The maximum building height of a residence erected on a Lot shall not exceed thirty-five (35) feet. The building height of the residence for purposes of the foregoing restriction shall be the vertical distance from the Lot ground level to the mean height between eaves and ridges, for a gable, hip or gambrel roof. The Lot ground level shall be selected by either of the following, whichever yields a greater building height:

(1). the elevation of the highest adjoining sidewalk or ground surface within a ten (10) foot horizontal distance from and parallel to the exterior wall of the building or structure when said sidewalk or ground surface is not more than ten (10) feet above lowest grade;

(2). an elevation of ten (10) feet higher than the lowest grade when said sidewalk or ground surface is more than ten (10) feet above the lowest grade.

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I. **Minimum Roof Pitch.** The minimum roof pitch of the main structure shall be 7/12, and a minimum of 5/12 pitch on accessory roofs.

J. **Eaves.** Overhangs, or eaves, shall be a minimum of twelve inches (12"), excluding any exterior finish. Eaves shall not be considered when calculating set back requirements.

K. **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.

L. **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.

M. **Awnings and Shutters.**

(1). **Awnings.** Before any awning, patio cover, cover, overhang or other similar structure may be erected, constructed or placed on any Lot, the Owner shall submit a written request for the awning or cover and receive written approval for the awning or cover from the Board or Committee. Awnings, patio covers, covers, overhangs or other similar structures shall be of a retractable nature, permanently mounted or affixed to the residence on the Lot; shall not extend beyond the rear foundation corner of the home in any direction; shall be made from nylon, canvas, or other material approved by the Board or 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, or fiberglass shall be permitted, erected or situated on any Lot in the Subdivision, excluding the structural frame of any approved retractable awning. For purposes of this rule, a wooden pergola or a gazebo is not considered to be an awning.

(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.

N. **Garages.** All residences shall have an attached garage which will accommodate at least two (2) automobiles. Garages in St. John Commons 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. Garages in St. John Commons 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 St. John Commons may be made until the Owner submits written plans for the changes, and those plans are approved by the Committee. A proposed garage additions must not fall within a Drainage & Utility Easement

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(DUE), must be attached to the current home, and cannot be located between the building set back lines and the Lot lines (cannot be beyond the setbacks). All garage additions must also be architecturally consistent in materials and appearance with the home. The Committee expressly reserves the right to review any garage addition regarding its location, size, and architectural design as compared to other similar structures or additions in the neighborhood.

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

P. **Exterior Residential Materials.** The colors and types of exterior building materials may be specified or limited by the Design Review Committee.

(1). **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 homes in St. John Commons, including, but not limited to, the gutters, 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.

Approved colors of homes in the St. John Commons neighborhood consist of any color originally available or installed on any home in St. John Commons. The Board recognizes that colors may be discontinued over time, and simply requests that Owners match the original color of their home as closely as possible to the original color when repainting their home. So long as the Owner is repainting their home the same original color, or a color as close as possible to the original color, then the Owner does not need to receive prior written approval of the Committee before painting their home.

If an Owner wishes to change the color of their home from its original color, they may do so if they use a color that already exists in the subdivision. In this case, the Owner shall submit the address of the home in St. John Commons that displays the color they wish to use.

The Board also recognizes that many residents desire individuality when it comes to decorating their homes. If an Owner wishes to use a color that does not already exist in St. John Commons, the Owner shall submit his request to the Committee along with paint samples showing the color the Owner wishes to use. The Committee has the discretion to determine whether the color will be harmonious and consistent with the appearance of other homes 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 homes already existing in the neighborhood. The decision of whether to approve a color that does not already exist in the St. John Commons Development is solely within the discretion of the Board and/or Committee, and a court may not review that decision unless it is determined approval was unreasonably withheld.

Because of their inability to blend well with most colors found in St. John Commons, 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 St. John Commons. Pursuant to the Declaration, the Committee may pursue removal or repainting of any non-conforming or unapproved exterior home color through legal or other equitable means.

(2). **Siding and Trim.** Exterior building materials shall be a minimum of eighty percent (80%) masonry. The accents and trim of the structure shall be either vinyl or wood. Unless the Owner is replacing his siding with the same style, material and color siding or trim as currently exists on the home, the Owner must submit a written request and obtain written approval by the Board or Committee for any siding or trim modifications in style, material or color. The Committee will also consider the installation of new wood-style substitute materials, such as Hardi-Plank ®, or an equivalent brand cement board, or such other wood substitute products. *ABSOLUTLEY NO ALUMINUM SIDING REQUESTS WILL BE APPROVED BY THE COMMITTEE.* ***INSTALLATION OF ALUMINIUM SIDING ON ANY HOME IN ST. JOHN COMMONS IS EXPRESSLY PROHIBITED AND SHALL NOT BE ALLOWED OR PERMITTED.*** No more than one course of eight inches (8") of concrete block, or eight inches (8") of poured foundation, shall be exposed above the finish grade in an unfinished condition. Any foundation exposed more than eight inches (8") must be veneered with the same materials as the main structure.

(3). **Roofs.** All roofs shall consist of asphalt or fiberglass shingles. All replacement roofing in St. John Commons must be consistent in style and color with that originally installed by the Developer or builder. 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 Board or 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 approval to replace the roof with the same style, material and color of shingle; but the Owner would need to submit for and receive approval 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 and is granted more time to complete the repairs or replacement.

Q. **Maintenance and Damages during Construction.** All owners and their builders/contractors shall be responsible for and maintain the job site in reasonable order, containing all trash and debris within the Lot and properly disposing of or removing the same. Likewise, all Owners 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. If such damage to the common areas occurs, the Association will send a notice to the Owner via first class, postage pre-paid U.S. Mail that the damage must be repaired so the common area is returned to its original condition prior to the damage. If the Owners fails or refuses to properly repair the common areas within thirty (30) days of the Association mailing notice to the Owner, the Association may provide any such maintenance, repair, replacement at Owner's sole cost and expense, and the expenses incurred by the Association, including collection costs, shall be added to and become a part of the Owner's assessments and shall become a lien against the Lot and collectible in the same fashion as other assessments levied by the Association.

Section 11.3. Exterior Lot Construction Standards

A. **Landscaping.** Each Owner shall provide reasonable landscaping on his Lot, including at a minimum, suitable foundation landscaping on the front of the home. Any major changes in landscaping that an Owner wishes to make to his Lot, such as, but not limited to, landscaping mounds, fountains, decorative ponds, etc. must be submitted in writing to the Board or authorized Committee and be approved in writing by the Board or authorized Committee before installation. The Committee may, in its discretion, adopt landscaping guidelines to promote and protect the integrity and aesthetic appearance of St. John Commons.

Finish grading of all yards must be completed within fifteen (15) days after each dwelling is completed, weather permitting, and all yards must be seeded or sodded with grass within ten (10) days after the completion of finish grading, weather permitting. If damage to the yard on any Lot occurs due to work or construction on the Lot, or due to disease of other conditions, the Owner shall repair all damaged areas and reestablish the lawn or yard by reseeding or re-sodding within twenty-five (25) days of the original damage, weather permitting.

No Owner shall be allowed to plant or remove trees, bushes, shrubbery or do any landscaping or gardening along lake beds, ditches, culverts or in any of the Common Areas except with the express permission from the Developer or Committee.

B. **Driveways.** All driveways shall be concrete or asphalt 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, blacktopped, 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 and asphalt 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, gravel, grass, or dirt driveways are expressly prohibited in the subdivision.

Each lot Owner is required to install a finished driveway meeting the standards set forth in this covenant within sixty (60) days of completing the lot's residence, unless the Owner requests in writing and is granted additional time to complete the driveway by the Committee. A residence is considered completed upon the issuance of a certificate of occupancy by the proper government authorities or at the time the residence becomes occupied, whichever occurs first. 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.

C. **Mailboxes and House Number Signs**

1. **Mailboxes.** All mailboxes must be approved in writing by the Committee before being installed. Mailboxes shall be of a complimentary design to the dwelling, shall be of masonry construction, and shall meet any specifications as set forth on "**Exhibit B**" of this Declaration. Owners shall be prohibited from altering the appearance of their mailboxes except to make repairs to, maintain, or replace the mailboxes in a manner which is consistent with "**Exhibit B**" or an appearance as otherwise specified by the

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Committee. An Owner may decorate their mailbox for a particular season or holiday in a manner that is not disruptive to mail service or would be offensive to other Owners as may be determined in the sole discretion of the Committee. The Committee may, in its discretion, adopt further mailbox guidelines to promote and protect the integrity and aesthetic appearance of St. John Commons.

Owners shall install and thereafter keep their mailboxes, including lettering and numbering, in a good state of repair at all times. Any mailbox that becomes damaged or in need of maintenance must be repaired or replaced within thirty (30) days of notification to the Owner by the Board or Committee. If the Board or Committee sends a written notice to the Owner, via first class, postage pre-paid, US Mail, to the Owner's last known address requesting that the Owner perform needed repair or maintenance to his mailbox, and the repair or maintenance work is not performed by the Owner within thirty (30) days of the date of the written notice mailed by the Board or Committee, then the Association reserves the right to repair, repaint or replace the mailbox, or any part thereof, and pass the expense of this work, including parts and labor, to the Owner of the Lot. In lieu of individual Owners within the Real Estate performing repair or maintenance work on their mailboxes, the Association may, but is not required to, budget for and perform regularly scheduled repairs, maintenance, and replacement of mailboxes on behalf of the Owners. Any Owner who does not consent to the Association performing this work on their mailbox must notify the Association in writing before said work is performed by the Association. If an owner refuses to perform needed repairs, maintenance, and replacement of his mailbox and said owner also refuses to allow the Association to perform said repair, maintenance, and/or replacement work, the Association reserves the right to seek any other remedy available to it as set forth in the Declaration to address the situation.

2. **House Identification Signs.** Every Owner may display a marker containing the name of the Owner and the street address of the property that has been assigned to that structure by the local authorities.

D. **Exterior Lighting.** Prior to being installed, replaced, changed or modified, 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.

No exterior lighting shall be directed or pointed outside the boundaries of the 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 within seven (7) days. If the Owner does not replace burned out bulbs or inoperable fixtures within seven (7) days, the Association has the right, but not the obligation, to replace the bulb or repair the fixture, and any costs incurred by the Association as a result of this repair work shall be reimbursed to the Association by the Owner within thirty (30) days of service. If the Owner does not, or refuses, to reimburse the Association any such amounts, the amounts shall become a special assessment against the Lot and collectible according to the same procedures and remedies as any other assessment due to the Association as set forth in this Declaration.

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 Lot line, nor on any Lot, the purpose or result of which will be to obstruct reasonable vision, light or air. No fence shall be erected in or extend into any Landscape or Mounding Easements. All owners shall maintain their respective fences in good condition, including repainting and/or re-staining wood fences and repairing any structural defects or signs of deterioration.

Fencing permitted to be used in the Development must be wooden privacy; split rail; black wrought iron style; black, brown or green vinyl coated chain link; or white or tan resin, poly-vinyl, composite or similar composite material. Metal, wire, or chain link fencing, except for black wrought iron style or black, brown or green vinyl coated chain link, is strictly prohibited in the subdivision. Barbed wire and electrified fencing (excluding invisible fencing for animals) are also strictly prohibited in the subdivision. The Committee reserves the right to require fences to be painted or stained to blend with the color of the respective houses.

All fencing, except for black, brown or green vinyl-coated chain link, shall be no higher than six (6) feet in height and shall not be placed closer to the front lot line than the front foundation corner of the primary residence. On corner lots an additional requirement is that fences may not be placed closer to the street than the building setback line on the side of the primary residence. Black, brown or green vinyl-coated chain link fencing may not exceed five (5) feet in height. For purposes of this covenant, the "height" of a fence shall be measured from ground level to the top of the fence infill. It does not include the height of any decorative post finial. If a lattice is installed on the top of the fence, the total height of the fence, including infill and lattice, shall be no more than six (6) feet. No exceptions to these height limitations shall be made for sloped yards or grades.

No fence shall be installed within twenty-five foot (25') of the shoreline of any lake or pond. Under no circumstances shall any fence be erected or installed on the property lines parallel to any public or private roadway. All fences must meet the applicable sight distance requirements set forth under state and local laws. The finished side of all fencing, including privacy style fences, shall be displayed outwardly, and shall not be turned so that the posts or other support structures of the fencing is facing outwardly, or so the finished side of the fence is facing in toward the residence or yard contained inside of the fence. (i.e. No backward fences!)

The Board or Committee also reserves the right to grant a variance of any limitation in this fence guideline upon written request by the Lot Owner and under facts or circumstances that would cause an undue hardship upon the 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.

This provision shall not be applied retroactively to any fence installed prior to its 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, carports, boat houses, gazebos, pergolas, and play structures, must be approved in writing by the Board or Committee prior to being erected, constructed or placed on any Lot in the Development. Such approval shall be obtained only after written application requesting authorization has been made to the Board or Committee by the Owner of the Lot. Only one (1) detached accessory structure, such as a storage shed or mini-barn, shall be permitted upon each Lot. The minimum area of an accessory structure shall be one hundred twenty (120) square feet and a maximum area of three hundred twenty (320) square feet. The

maximum height for any accessory structure is twelve (12) feet.

Accessory structures shall be setback at least five (5) feet from the rear and side property lines and shall not be situated forward of the furthest forward rear corner of the residence located on the same Lot as the accessory structure. In addition, no accessory structures may be built, located or placed in a designated easement area as set forth on the Plats of the Development.

All accessory structures are to be constructed from wood or other approved materials; with the exception that resin, poly-vinyl, composite, plastic, aluminum or other metal accessory structures are strictly prohibited on any Lot in the subdivision. All accessory structures shall have a permanent foundation.

The exterior of any accessory structure shall match or be consistent with the exterior appearance of the residence, and shall have the same color and style of siding and roofing shingle as the residence; however, the accessory structures is not required to have vinyl or brick material siding. No items, including implements, tools, signs, displays, etc., may be hung, stored, displayed or affixed to, or placed, stacked or stored along the outside of, the exterior of any accessory structure either permanently or temporarily.

G. **Pools.** No on-ground or above-ground swimming pool shall be installed or erected upon any Lot, including inflatable pools. A pool generally designed for above ground use that is completely or partially buried in the ground will not be considered an in-ground pool for purposes of this provision.

A spa, hot tub or small one-piece or inflatable "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 Lot, the Owner must submit a written architectural request form and receive written approval for the installation of the spa, hot tub or in-ground pool, plus fencing, if required, from the Committee.

Proper fencing, as required by law, is required for all in-ground pools. An electronic, or sliding, cover may not be installed in lieu of fencing.

H. **Basketball Goals, Playsets, And Other Recreational Equipment.**

(1). **Swingsets and Playsets.**

Children's play equipment such as sandboxes, swings and slides, and tents shall not require approval from the Committee provided such equipment is not more than six foot (6') in height, maintained by the Lot Owner in good repair, and every reasonable effort has been made by the Lot Owner to screen or shield the equipment from view of adjacent Lots. All swingsets and playsets taller than six foot (6') must be approved by the Committee in writing before being installed. Swingset or playset structures must be wooden, plastic or vinyl, and may not be taller than twelve foot (12') in height at its highest point. No metal swingsets or playsets structures are permitted in the subdivision. Swingsets and playsets shall be located behind the rear foundation line of the residence and must be kept in good repair and appearance, including painting or staining. The Committee reserves the right to adopt additional rules regarding the location of swingsets and playsets and the materials and/or color(s) of any covering or roof on any fort, tower or enclosure.

(2). **Basketball Goals**

Permanent basketball goals must be approved by the Committee before being installed on any Lot. Basketball goals may be permanently installed along the

driveway or an approved court, but under no circumstances shall a basketball goal be mounted or installed upon any home in the Development. Temporary, or moveable, basketball goals may be located along the driveway of any home in the Development.

All basketball goals, whether permanent or temporary, shall be properly maintained, including, but not limited to, goals must have netting that is not torn, backboards shall be of manufacturer quality (i.e. not homemade or plywood), backboards must have a rim, and no part of the goal or rim shall be broken. No buckets, bricks, sandbags, rocks, blocks, or other weighted items shall be stacked or placed on the base of any portable basketball goal. The Committee reserves the right to request the repair or removal of any basketball goal upon a finding by the Committee that proper maintenance and repair of the goal is not being performed by the Owner; and if the Owner refuses to remove or repair the goal upon request from the Committee, to proceed with legal action to have the goal removed based upon the failure of the Owner to properly maintain the goal.

Under no circumstance shall any basketball goal be installed or placed on or next to any sidewalk, curb or street in the Development, or in any other location on a Lot that will require or allow play to occur in the streets of the Development, hinder or interfere with traffic on any street or sidewalk, or hinder or obstruct any bus stop or mailbox in the Development.

(3). **Miscellaneous**

Permanent or temporary basketball courts or other sport courts must be approved in writing by the Board or Committee prior to construction or installation, and the Board or Committee reserves the right to approve or disapprove the style or location of all basketball goals and/or courts, whether permanent or temporary. Trampolines and other temporary play equipment do not require written permission from the Committee, but the Committee does reserve the right to adopt rules regarding the location of such equipment. The Committee may consider the impact or the potential effect of such a court, trampoline, play equipment or use on neighboring properties, and the Committee reserves the right to require any basketball or sport court, trampoline, or other piece of play equipment to be enclosed by a fence or other barrier if the Committee determines that such a fence or barrier would lessen or minimize the impact on neighboring properties. The Committee will not approve any lighted courts or facilities.

I. **Holiday Lighting and Decorations**. Christmas holiday lighting and decorations are permitted on all 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.

J. **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 St. John Commons may display an American flag on their property without prior permission of the Committee, but only if the flag is displayed by following: a) the rules set forth in the United States Code; b) the rules adopted by the American Legion; or c) 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 bracket or standard attached to the Owner's residence. Only one (1)

bracket or standard may be installed upon any Lot at the same time. Flag poles used in a mounted bracket or standard may not exceed six (6) feet in length.

Likewise, prior approval is not required for any Owner wishing to install a freestanding flag pole on his Lot. However, a freestanding flag pole may not exceed twenty (20) feet in height from grade level; and the pole may not exceed more than two (2) inches in diameter (i.e. across). A freestanding flag pole may not be located on any Lot so that it is within twenty (20) feet of any street or right-of-way. Only one (1) flag pole may be installed upon any Lot at the same time. A flag may not exceed three feet by five feet (3' x 5') in size. Only the American Flag may be flown from a mounted bracket or standard pole.

For all other flagpoles and standards, an Owner must submit a written request and receive written approval from the Committee. The Committee reserves the right to adopt additional rules limiting the size or number of American flags that may be displayed by an Owner, if the Committee deems such rules necessary or advisable in the future.

The Committee reserves the right to grant a variance of any limitation in this provision upon written request by the 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.

K. **Satellite Dishes and Outside Speakers.**

1. **Satellite Dishes.** 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 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 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 satellites dishes be permanently mounted in a location on the 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.

After a dish is installed, if the Committee believes or determines that the device could have been installed in another location on the Lot less visible from the street

directly in front of the home, 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 home, and it is determined that the dish could have been installed in a location on the rear or side of the home 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 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, must receive prior written approval of the Committee before being installed on any Lot.

2. **Outside Speakers.** Outdoor speakers are permitted, but the noise from the speakers may not be directed outside the boundaries of the Lot, nor may the sound be played at a level loud enough to create a nuisance or disturbance to any other Owner in the subdivision. If an Owner's outside speakers create a nuisance or disturbance to any other Owner in the neighborhood, the Association reserves the right to abate the nuisance pursuant to the terms of this Declaration in any manner provided by law or in equity.

L. **Solar Panels and Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment, such as wind generators, shall be constructed or installed on any Lot 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. Ground mounted solar panels will be approved only if they are hidden or obscured by fencing or other acceptable foliage.

M. **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.

N. **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 us in boring for oil, water, or natural gas shall be erected, maintained, or permitted on any Lot.

O. **Field Tiles.** Any field tile or underground drain which is on any Lot must be allowed to perpetuate.

P. **Wells and Septic Tanks.** Each Lot must be approved for a septic system, which must conform to all existing laws, rules, regulations, and directives of the Indiana State Board of Health and any other applicable municipal agency. In no event shall the effluent from the system by allowed above ground level.

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 the property 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 only into drainage swales or storm structures included in the storm drainage system for the subdivision. 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.

T. **Ditches, Swales and Erosion Control.** It shall be the duty of the Owner of a Lot to maintain all ditches, swales, culverts, and lake banks along their property line(s). Each Owner shall be responsible for maintaining any culvert pipes under his drive or on his property free of mud and debris so the flow of water is not impeded or hindered. The size of any installed culvert pipes shall be adequate to allow the passage of water without blocking the drainage ditch or swale, or causing water to back up, improperly drain, pool or stand. An Owner shall deemed to have granted an access easement across his Lot in favor of the Association or any other authorized utility or governmental authority for the express purpose of performing maintenance or repair to any storm drainage ditch or swale located on his Lot. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

Section 11.4. Owner's Obligations.

A. **Maintenance**. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. All Owners shall perform routine and necessary maintenance, including, but not limited to, painting, mold or mildew abatement or cleaning, wood repair, garage door repair, siding repair, roofing repair, window and porch screens and window repair, driveway repair, sidewalk repair, on the exterior of their residence and all improvements on their Lot to maintain a reasonable appearance and to avoid becoming unsightly in relation to the appearance of other homes and improvements in the neighborhood.

All lawns and other landscaping materials shall be maintained on a regular basis. In no event shall the grass on any Lot exceed the length of eight (8) inches, nor shall any noxious, illegal or other weeds, underbrush, or other unsightly growths be permitted to grow or remain upon any Lot. An example of a weed that shall not be permitted is Dandelions, due to their nature to infest other lawns in their vicinity. Flower beds, trees and bushes shall remain neatly trimmed and not allowed to become overgrown with weeds or other vegetation.

Unsold Lots shall be maintained by the Developer or Association. Sold Lots that are vacant shall be maintained by the Owner in a clean, neat sanitary, attractive and uncluttered manner and not allowing grass or other growth to be over eight (8) inches in height. Ground cover located in forested areas of sold and/or unsold Lots and not located within the fifteen (15) foot road frontage easement shall be excluded from this eight (8) inch height requirement.

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 St. John Commons 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, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto 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 Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common

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Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto.

Section 11.5. General Prohibitions

A. **Signs**. No signs of any kind shall be placed or displayed on any Lot, 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 Lot 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 Lot 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 Lot or home 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 Lot 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 Lot 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 Lot or at the entryway of the subdivision;

(6). Political signs, no larger than six (6) square feet, promoting a political candidate displayed on a Lot will be allowed beginning two (2) weeks prior to the primary or election date and is 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 signs advertising any home in the Real Estate "for lease or rent" be allowed. Also, under no circumstances shall any sign advertising or promoting any business, except as permitted herein, be allowed. 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 Lot 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. This restriction shall not be applicable to the Developer during the Development Period.

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 lot in St. John Commons 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 Lot 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.**

No vehicles of any kind shall be parked on the streets at any time. No camper, trailer of any kind, mobile home, recreational vehicle, truck, commercial vehicle, 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 Lot in the St. John Commons subdivision unless such vehicle or trailer is kept in an enclosed garage and out of public view; except that recreational vehicles, boats, and boat and utility trailers may remain in the driveway of an Owner's Lot between April 1 and October 31 of each calendar year.

For purposes of this restriction, the term "truck" does not include pickup trucks up to two (2) ton, full size vans and/or sport utility vehicles. Except for the purpose of moving into or from a home in St. John Commons, no semi-tractor, semi-trailer, semi-tractor/trailer combo, box style, non-pickup style trucks or other similar vehicles shall be permitted in the St. John Commons subdivision. Heavy equipment that is being used for a specific project on the property will be allowed only with approval by the Board of Directors.

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(2). **Inoperative or Disabled Vehicles**

No inoperative, disabled, unregistered or unlicensed vehicle shall be parked, stored, or repaired anywhere in St. John Commons 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 St. John Commons Development, including the Lots.

Any vehicle parked or stored on any street or common area within St. John Commons 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 born 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. 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. **Watercraft and Boat Docks.** Watercrafts used on the lakes within St. John Commons are limited to a maximum of sixteen (16) feet in length. All watercrafts must use electric trolling motors only. The use of gasoline engines on any watercrafts in St. John Commons is strictly prohibited. For purposes of this provision, the term "watercraft" includes motor boats, sail boats, row boats, skiffs, dinghies, canoes, kayaks, and paddleboats. The term "watercraft" shall not include jet skis, wave runners or other

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similar vehicles. Use of jet skis, wave runners, and similar vehicles on the lakes in St. John Commons is strictly prohibited.

Lake boat docks must be approved by the Committee before being installed. Boat docks may not extend more than ten (10) feet from the shoreline into the water at normal pool level. The Committee reserves the right to grant a variance of the ten (10) foot limitation on boat docks upon written request by the 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.

All boats and persons using watercraft on the lakes must comply with Indiana State Watercraft Regulations at all times. The Board has the right to adopt additional rules and regulations regarding watercraft and the use of the lakes that it deems necessary or advisable. Because the lakes in St. John Commons are common areas, the Association reserves the right to suspend an Owner's privileges to use the lakes at any time if the Owner fails to follow state watercraft regulations, this covenant, or any rules and regulations adopted by the Board regarding use of the lakes, and the Association may pursue any form of relief authorized by this Declaration, the rules, or Indiana law in order to gain an Owner's compliance with this covenant and any rules adopted pursuant thereto.

E. **Garbage, Trash, and Other Refuse.** All trash, rubbish, garbage or other waste shall be regularly removed from a Lot 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 or out of public view, except that all such trash containers may be placed outside the evening before scheduled trash pick-up and remain outside until 9 o'clock p.m. on 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 in any area of a Lot, including, but not limited to, 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.

F. **Outside Storage and Firewood.**

(1). **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, project materials, etc. need to remain outside the Residence or garage for more than one (1) consecutive week, the Owner must seek approval from the Board of Directors or its representative. Items that are delivered to a Lot for improvements, including, but limited to, such items as landscaping mulch, 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.

(2). **Firewood**

All firewood shall be kept neatly stacked and shall be kept or stored in the rear yard of the home or along the side of a home, but wood may not be stored forward of

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the front corner of the home, in the front yard, in the driveway or on the front porch of any Lot. Tarps or coverings for stored wood shall be brown, tan or other dark color and shall be securely fixed.

G. **Clotheslines.** No clotheslines or other outside drying or airing facility shall be permitted in the subdivision unless approved by the Committee.

H. **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 shall be raised, bred or kept on any Lot, except that dogs, cats or other customary household pets may be kept on a Lot, 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 Lot 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.

Unless a pet is contained inside a fenced yard, 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 Lot or other area of the Development without the Owner present does not constitute "attended." Owners may have one (1) dog house inside a fenced yard area, but the dog house must be wood or resin, no larger than twenty five (25) square feet in size, no taller than five (5) feet, and must be similar in color and appearance to the main house structure. Kennels and/or chain link cages or runs 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. 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.

I. **Hunting and Trapping.** Hunting and trapping are prohibited on any part of the Real Estate.

J. **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.

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K. **Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling, or on any Lot, 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.

L. **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 Lot; provided nothing in this paragraph shall be deemed to restrict or otherwise limit Declarant's rights under this Declaration.

M. **Laws and Ordinances.** Every Owner and occupant of any Lot 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 11.6. Regulations for Common Areas. As part of its general duties, the Association shall regulate the use, maintenance, repair and replacement of the lakes, lake areas, boat docks and slips, dam, levees, streets, entry gates, if any, and other Common Areas within the Development and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the lakes, lake areas, dam, levees, streets and other Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the lakes, lake areas, dam, levees, streets and other Common Areas by any Owner, nor shall the lakes, lake areas, dam, streets and other Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

Each Owner, by accepting a deed in St. John Commons, agrees and covenants to follow and comply with all rules and regulations, including, but not limited to, any user fees, permit or registration fees, or other limitations or requirements, adopted by the Association's Board of Directors regarding boating, fishing, swimming, and other activities related to the use of the lake, lake areas, dam, levees, streets and other Common Areas.

ARTICLE XII

RULEMAKING AND REMEDIES FOR ENFORCEMENT

Section 12.1. Rules and Regulations. Subject to the provisions hereof, 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 Lots, streets (public or private), Common Areas, and any other portion of the Real Estate, including the personal conduct of the Members and guests thereon, as in the sole discretion of the Board are deemed necessary or advisable. These rules and regulations, and any amendments thereto, shall be furnished by the Association to all Members prior to the effective date. All rules and regulations shall be binding and enforceable upon each and every Lot and Lot Owner, including all occupants, guests and invitees of any

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Lot, in the Development the same as if it were expressly set forth in the Declaration itself. Any rule or regulation adopted by the Board may be specifically overruled, cancelled, or modified by the Board or at a duly called and constituted regular or special meeting of the Members by a majority vote of all eligible Members of the Association, subject to Developer's consent during the Development Period.

Section 12.2. Enforcement 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 12.3. 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 of 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 12.4. Self-Help Maintenance and Abatement. If any Owner, or his family, tenants, guests, invitees, servants, or agents, fails or refuses to comply with any of the requirements or restrictions of the Declaration, the Association, or any of its designated agents, shall have the right, but not the obligation, to enter upon any Lot to perform maintenance, mowing, repair, or other acts as may be reasonably necessary, or to remove any violation of the Declaration from the Lot, in order to make such Lot and any improvements thereon conform to the requirements of the Declaration.

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 there shall be lien against the Lot for these expenses, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association may file suit and recover such amount together with reasonable attorney fees and costs of collection.

Section 12.5. Costs and Attorney Fees. In the event the Association or Committee is required to retain attorneys or engage 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

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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. The provisions of this Section 12.5 shall be in addition to any remedies that may be provided in any specific sections of this Declaration.

ARTICLE XIII

DURATION AND AMENDMENT OF DECLARATION

Section 13.1. 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 Morgan 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 ten (10) years each unless by unanimous vote of the Owners it is agreed to terminate the provisions of this Declaration. A declaration to terminate the Declaration must be signed and acknowledged by each Lot Owner in St. John Commons, and must be recorded in the Office of the Recorder of Morgan County, Indiana, at least one (1) year prior to the expiration of any ten (10) year renewal period, but shall not be recorded more than two (2) years prior to the expiration of any ten (10) year renewal period.

Section 13.2. Amendment. Notwithstanding the foregoing, changes or amendments to any provision(s) in this Declaration may be made at any time by vote of those persons who are then the Owners of sixty percent (60%) of the Lots in the Development and who are 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, the Articles, or the Bylaws.

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 to this Declaration, 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.

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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.

Each amendment adopted by the membership shall be executed by the President and the Secretary of the Association, certifying that a majority of the 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 Morgan County, Indiana, and such amendment shall not become effective until so recorded.

Section 13.3. Amendments by Developer Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Developer shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, and the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made: (i) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units; (iii) to bring this Declaration into compliance with any statutory requirements; (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto; or (v) to remedy any conflicting language in multiple provisions of this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make, or consent to any amendments described in this Section on behalf of each Owner a proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to the rights reserved or granted under this Section shall terminate at such time as the Developer no longer holds or controls title to any part or portion of the Real Estate.

Section 13.4. Amendments with Developer'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 Developer during the Development Period.

ARTICLE XIV

ACCEPTANCE AND RATIFICATION

Section 14.1. In General. All present and future Owners, mortgagees, contract purchasers, tenants 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 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, the execution of a lease or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, 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, tenant 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, contract or lease thereof. 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 Articles, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XV

NEGLIGENCE

Section 15.1. In General. Each Owner shall be liable for any damage to or for the expense of any maintenance, repair or replacement to the Common Areas or any other area in the Real Estate as a result of the willful misconduct or negligence by the Owner or any member of his family or his or their guests, pets, employees, agents, tenants, invitees or lessees. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of the Common Areas, any Lot or Dwelling Unit in the Development.

ARTICLE XVI

GENERAL PROVISIONS

Section 16.1. 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 16.2. 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 opinion of the Developer or 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.

Section 16.3. Right of Entry. The Association, and during the Development Period the Developer, shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and the Association rules, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 16.4. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

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Section 16.5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 16.6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 16.7. Rights of Third Parties. This Declaration shall be recorded for the benefit of the Developer, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Developer and the Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

[End of Declaration]

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IN WITNESS WHEREOF, the Developers have caused this Revised and Restated Declaration of Covenants, Conditions and Restrictions for St. John Commons to be executed as of the date written above.

TODD H. BURNS & ROGER D. HICKEY,
As Owners of Lots 1-8, 10-13, 28-33, 37, 39-43 (24 lots total)

Todd H Burns
Todd H. Burns

12/30/09
Date

Roger D. Hickey
Roger D. Hickey

12/30/09
Date

DONALD E. POYNTER
As Owner of Lots 19, 46, 48-53, 55-59, 61-63, 67-69 (19 lots total)

Donald E. Poynter
Donald E. Poynter

12/30/09
Date

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STATE OF INDIANA)
) SS:
COUNTY OF MORGAN)

Before me, a Notary Public in and for said County and State, personally appeared Todd H. Burns, Roger D. Hickey, and Donald E. Poynter, Co-Developer of St. John Commons, who acknowledged the execution of the foregoing Revised and Restated Declaration of Covenants, Conditions and Restrictions for St. John Commons, and who, having been duly sworn, stated that he is duly authorized to execute said Revised and Restated Declaration and that the representations therein contained are true.

Witness my hand and Notarial Seal of this 30 day of December, 2009.

STAMP:

Scott A Tanner
Notary Public Seal State of Indiana
Johnson County
My Commission Expires 11/18/12

Notary of Public – Signature

Scott A. Tanner

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

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EXHIBIT
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A

DESCRIPTION OF 73.020 ACRES

Part of the North Half of the Southeast Quarter of Section 13, Township 11 North, Range 2 East, Morgan County, Indiana, described as follows:

Commencing at a stone, found in place in the county road, which marks the southwest corner of the Southeast Quarter; thence North no degrees 11 minutes 53 seconds West (assumed bearing), with the west line of the Southeast Quarter and in the county road, 1338.16 feet to an iron pin which marks the southwest corner of the North Half of the Southeast Quarter; thence continuing North no degrees 11 minutes 53 seconds West, with the west line of the North Half and in the county road, 682.46 feet to an iron survey nail and the POINT OF BEGINNING of the parcel herein described; thence South 74 degrees 33 minutes 02 seconds East, 781.03 feet to an iron pin; thence South 09 degrees 38 minutes 55 seconds East 502.39 feet to an iron pin on the south line of the North Half; thence South 88 degrees 29 minutes 36 seconds East, with said south line, 1893.27 feet to a 3/4" iron pin with aluminum cap engraved "Holloway-S0530" which marks the southeast corner of said North Half; thence North no degrees 13 minutes 36 seconds East, with the east line of the North Half of the Southeast Quarter, 1335.12 feet to an engraved stone, found in place, which marks the northeast corner of the North Half, also being the northeast corner of the Northeast Quarter of the Southeast Quarter; thence North 88 degrees 37 minutes 26 seconds West, with the north line of the Northeast Quarter of the Southeast Quarter, 1364.52 feet to a stone, found in place, which marks the northwest corner of the Northeast Quarter of the Southeast Quarter, also being the northeast corner of the Northwest Quarter of the Southeast Quarter; thence North 88 degrees 14 minutes 51 seconds West, with the north line of the Northwest Quarter of the Southeast Quarter, 1373.66 feet to a 3/4" iron pin in the county road, with an aluminum cap engraved "Holloway - S0530", set this survey to mark the northwest corner of the Southeast Quarter; thence South no degrees 11 minutes 53 seconds East, with the west line of said Southeast Quarter, 655.70 feet to the Point of Beginning.

Containing 73.020 acres, more or less, and subject to the right-of-way for the county road on the west side of the parcel, and to any other rights-of-way, easements or restrictions of record or observable.

DESCRIPTION OF 41.273 ACRES

Part of the Southeast Quarter of the Southeast Quarter of Section 13 and part of the Northeast Quarter of the Northeast Quarter of Section 24, all in Township 11 North, Range 2 East, Morgan County, Indiana, described as follows:

BEGINNING at a 3/4" iron pin with an aluminum cap engraved "Holloway-S0530", which marks the northeast corner of the Southeast Quarter of the Southeast Quarter of Section 13; thence North 88 degrees 29 minutes 36 seconds West (assumed bearing), with the north line of the quarter-quarter, 1364.09 feet to a 3/4" iron pin with cap with an aluminum cap engraved "Holloway-S0530" which marks the northwest corner of the Southeast Quarter of the Southeast Quarter of Section 13; thence South no degrees no minutes 49 seconds East, with the West Line of the quarter-quarter, 1115.24 feet to an iron pin; thence South 83 degrees 45 minutes 09 seconds East, 448.63 feet to an iron pin; thence South 48 degrees 41 minutes 38 seconds East, into the Northeast Quarter of the Northeast Quarter of Section 24, 404.34 feet to an iron pin; thence South 77 degrees 21 minutes 01 seconds East, 376.96 feet to an iron pin; thence North 89 degrees 58 minutes 41 seconds East, 250.00 feet to an iron survey nail on the East Line of the quarter-quarter and in the county road; thence with said East Line and in the county road, North no degrees 13 minutes 36 seconds East, 152.88 feet to a 3/4" iron pin with aluminum cap engraved "Holloway-S0530", which marks the southeast corner of Section 13; thence continuing North no degrees 13 minutes 36 seconds East, with the East Line of the Southeast Quarter of Section 13, 1335.12 feet to the point of beginning.

Containing 41.273 acres more or less and subject to any right-of-ways, easements or restrictions of record or observable.

St. John Commons

(Plat Layout Diagram)

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EXHIBIT
B

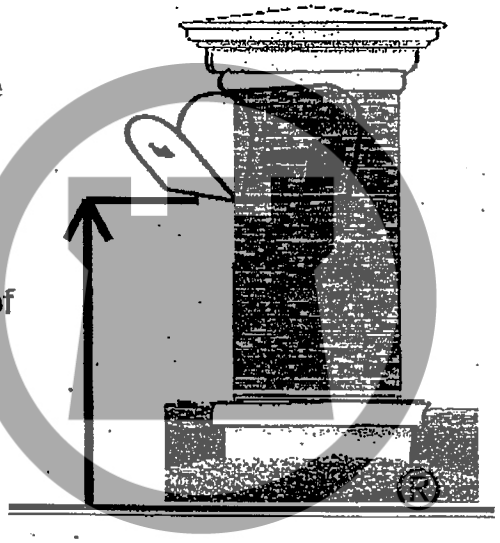
St. John Commons

Mail Box Specifications

approved by Morgantown Postmaster (Mike), 812-597-4012

Mail Box Height:
from street level to the bottom of box is 40".

Mail Box Set Back:
12" to 24" from edge of street



When road work is done (passable with gravel) a road inspection will take place. Upon approval of road condition by Postmaster, the form PS4027 Petition for Extension will be completed and submitted.

If Homes are built before approval of road conditions, there will be temporary mail boxes set at St. John Commons Main Entrance on Old Morgantown Road.

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