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**WOODBERRY PLANNED
DEVELOPMENT**

A SUBDIVISION OF CENTER CIVIL
TOWNSHIP, HENDRICKS COUNTY,
INDIANA

**DECLARATION
OF COVENANTS,
CONDITIONS,
EASEMENTS
AND RESTRICTIONS
CHICAGO TITLE**

443

TABLE OF CONTENTS

GENERAL PROVISIONS 2

1. Purpose 2

2. Declaration to Run with Land 2

3. Easements 2

4. Dedication 2

5. Agency for Plats 2

ARTICLE I

DEFINITIONS 3

1.1 Adjacent Lots 3

1.2 Area of Common Responsibility 3

1.3 Association 3

1.4 Board 3

1.5 By-Laws 3

1.6 Common Area 3

1.7 Common Expenses 3

1.8 Community-Wide Standard 4

1.9 Construction 4

1.10 Declarant 4

1.11 Declaration 4

1.12 Development 4

1.13 Drainage System 4

1.14 Duplex 4

1.15 Eligible Mortgage Holder 4

1.16 Eligible Votes 4

1.17 Land Use Standards 5

1.18 Lot 5

1.19 Majority 5

1.20 Member 5

1.21 Mortgage 5

1.22 Mortgagee 5

1.23 Mortgagor 5

1.24 Owner 5

1.25 Person 5

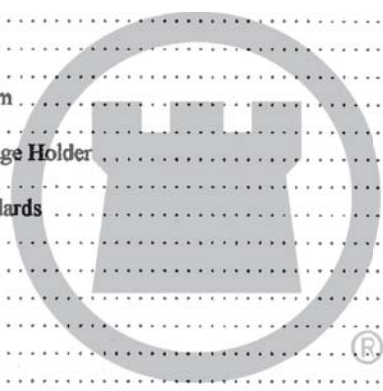
1.26 Plat 5

1.27 Real Estate 5

1.28 Residential Unit 6

1.29 Single Family 6

1.30 Streets 6



CHICAGO TITLE

1.31 Supplemental Declaration 6

ARTICLE II

PROPERTY RIGHTS 6

2.1 In General 6

2.2 Owner's Rights of Enjoyment 7

2.3 Owner's Rights to Ingress and Egress 8

2.4 License for Encroachment 8

2.5 Party Walls, Common Roofs and Common Foundations 9

2.6 Use of Lots 9

2.7 Use of Common Areas 9

2.8 Signs 10

2.9 Rules and Regulations 10

2.10 Exterior Lighting 10

2.11 Storage and Parking Vehicles 10

2.12 Pets 11

2.13 Nuisances 11

2.14 Garbage, Trash and Other Refuse 11

2.15 Trash Receptacles 12

2.16 Temporary Structures 12

2.17 Utility Services 12

2.18 Wells and Septic Tanks 12

2.19 Antennas and Solar Heat Panels 12

2.20 Mailboxes and Address Identification 12

2.21 Use of Yards 12

2.22 Maintenance of Lots and Improvements 13

2.23 Ditches, Swales, and Waterways 13

2.24 Storage Tanks 13

2.25 Motor Vehicles 13

2.26 Soliciting 13

2.27 Swimming Pools 14

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS 14

3.1 Membership 14

3.2 Classes of Membership and Voting Rights 14

3.3 Board of Directors 14

3.4 Professional Management 14

3.5 Responsibilities of the Association 15

3.6 Initial Governance of Association 15

ARTICLE IV

| | |
|--------------------------------------|----|
| COMMON MAINTENANCE | 15 |
| 4.1 Maintenance by Association | 15 |
| 4.2 Liabilities of Owners | 16 |
| 4.3 Excess Costs | 16 |
| 4.4 Common Water Utility Usage | 16 |

ARTICLE V

| | |
|---|----|
| INSURANCE | 17 |
| 5.1 Insurance | 17 |
| 5.1.1 Insurance of Common Area | 17 |
| 5.1.2 Liability Insurance | 17 |
| 5.1.3 Standards for Insurance | 17 |
| 5.1.4 Other Insurance | 19 |
| 5.2 Individual Insurance | 19 |
| 5.2.1 Required Insurance | 19 |
| 5.2.2 Rebuilding of Residential Units | 19 |
| 5.3 Disbursement of Proceeds | 19 |
| 5.4 Damage and Destruction | 20 |
| 5.5 Repair and Reconstruction | 20 |

ARTICLE VI

| | |
|------------------------|----|
| NO PARTITION | 20 |
| 6.1 No Partition | 20 |

ARTICLE VII

| | |
|------------------------|----|
| CONDEMNATION | 21 |
| 7.1 Condemnation | 21 |

ARTICLE VIII

| | |
|--|----|
| RIGHTS AND OBLIGATIONS OF THE ASSOCIATION | 21 |
| 8.1 Common Area | 21 |
| 8.2 Duty To Comply With Easements Benefiting The Development | 21 |
| 8.3 Services | 22 |
| 8.4 Personal Property and Real Property for Common Use | 22 |
| 8.5 Implied Rights | 22 |
| 8.6 Self-Help | 22 |

ARTICLE IX

| | |
|-------------------------------------|----|
| ASSESSMENTS | 22 |
| 9.1 Purpose of Assessment | 22 |
| 9.2 Creation of Assessments | 23 |
| 9.3 Computation of Assessment | 23 |



9.3.1 Budget 23

9.3.2 Amount of Assessments 23

9.3.3 Failure to Approve Budget 24

9.3.4 Deficits 24

9.3.5 Limitation on Increases 24

9.4 Special Assessments 24

9.5 Lien for Assessments 24

9.6 Effect of Nonpayment of Assessments: Remedies of the Association 25

9.6.1 Lien Rights 25

9.6.2 Priority of Application of Payment 26

9.6.3 Suspension of Voting Rights 26

9.7 Capital Budget and Contribution 26

9.8 Subordination of the Lien to First Deeds of Trust and First Mortgages 26

9.9 Date of Commencement of Annual Assessments 26

9.10 Assessments by Declarant 27

ARTICLE X

ARCHITECTURAL STANDARDS 27

10.1 Architectural Standards Jurisdiction 27

10.2 Board Authority 28

10.3 Procedures for Approval 28

10.4 Power of Disapproval 29

10.5 Hold Harmless 29

10.6 Inspection 29

10.7 Declarant Improvements 30

10.8 Remedies for Failure to Obtain Approval 30

10.9 Power to Grant Variances 30

ARTICLE XI

MORTGAGEE RIGHTS 30

11.1 Rights of Mortgagees 30

ARTICLE XII

GENERAL PROVISIONS 30

12.1 Duration 30

12.2 Amendment 31

12.3 Indemnification 32

12.4 Easements for Utilities 32

12.5 General and Grammar 32

12.6 Severability 32

12.7 Captions 33

12.8 Perpetuities 33

12.9 Mailing Address 33

ARTICLE XIII
ENFORCEMENT 33
13.1 In General 33
13.2 Government Enforcement 34
13.3 Delay or Failure to Enforce 34

ARTICLE XIV
PRIVATE AMENITIES AND SERVICES 34
14.1 Private Amenities and Services 34

ARTICLE XV
LIMITATION ON DECLARANT'S LIABILITY 34
15.1 Limitation on Declarant's Liability 34



CHICAGO TITLE

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

This Declaration of Covenants, Conditions, Easements and Restrictions of Woodberry Planned Development, a Subdivision of Center Civil Township, Hendricks County, Indiana, is made as of this 20th day of JULY, 2006, by CRIBS Danville, LLC ("Declarant").

Declarant states as follows:

CROSS REF. - WOODBERRY INST. # 9500020367
P.C. 3 SL 125

A. Declarant is the owner of the real property described in Exhibit A, which is attached hereto and made a part hereof ("Real Estate").

B. Declarant wishes to maintain on the Real Estate a planned community to be commonly known as Woodberry Planned Development, which consists of one structure which may be used as a Single Family dwelling and several Duplexes. As part of the development, various community facilities, such as sidewalks, roads, landscaping, open spaces, and drainage systems may be provided for the benefit and enjoyment of the Owners and residents of Residential Units.

C. The development requires uniform and continuing care and maintenance for the primary benefit and enjoyment of the Owners and residents of Residential Units.

D. Declarant intends by this Declaration to impose upon the Real Estate mutually beneficial restrictions under a general plan for the benefit of all Owners and residents of Residential Units in the development by the recording of this Declaration.

E. Declarant intends to sell and convey the Lots situated within the platted area of the Development, and before doing so wishes to subject to and impose upon all real estate within such platted area mutual and beneficial restrictions, covenants, conditions, easements, and charges under a general plan or scheme of maintenance for the benefit and complement of the Residential Units and lands in the development and future owners thereof.

F. Declarant has formed (or intends to form) The Woodberry Property Owners' Association, Inc., or an organization of similar name, as a not-for-profit mutual benefit corporation under the general laws of the State of Indiana ("Association") for the purpose of carrying out the powers and duties set forth herein.

G. Declarant intends to convey all or any portion of the common area in the development contemplated hereby from time to time in fee simple title, free of financial encumbrances, to the Association, subject to easements, restrictions of record and such other conditions as Declarant may at the time of such conveyance deem appropriate.

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate will be held, sold, and conveyed subject to the following.

GENERAL PROVISIONS

1. Purpose. The purpose of this Declaration is to protect the value and desirability of the Real Estate.

2. Declaration to Run with Land. The provisions of this Declaration will run with the Real Estate and will be binding on all parties having any right, title, or interest in the Real Estate or any part thereof, and their respective heirs, successors, successors-in-title, and assigns and will inure to the benefit of each owner thereof.

3. Easements. Declarant has recorded certain easements as shown or described on the Plat. The Association shall indemnify Declarant against, and hold Declarant harmless from, any and all claims, damages, and injuries resulting from or relating to the use or maintenance of any such easements.

4. Dedication. So long as Declarant is the record title holder of all or any portion of the Real Estate or of any additional property as may by subsequent amendment hereto be added and subjected to this Declaration, Declarant, for itself and its successors and assigns, specifically reserves unto itself the right and privilege to convey or contract to convey at a future time, any portion of the common area of the Development to any public agency or authority, or to any public or private utility for any of the following:

4.1.1 storm water runoff, detention, retention, or conveyance serving all or any portion of the Development or nearby properties;

4.1.2 public rights-of-way;

4.1.3 utility services serving one or more of the Lots, including but not limited to any or all facilities for gas, electricity, telephone, cable television, water, and sanitary sewer services.

Such rights will also accrue to the Association as provided in this Declaration.

5. Agency for Plats. So long as Declarant is the owner of any portion of the Development (as defined in Section 1.12 hereof), Declarant, in its own capacity and as agent for any or all of the other Owners (as defined in Section 1.24 hereof), may at any time and from time to time prepare, present for approval by any or all appropriate governmental entities, execute, and/or record a Plat, a re-plat, an amended plat, a corrective plat, or other similar survey or modification thereof, and may prepare, present for approval by any or all appropriate governmental entities, execute, and/or record any other documents with respect thereto. The execution of any such Plat or other document by Declarant as agent of any Owner will, for all such purposes, be deemed to constitute the execution of such Plat or other document by such Owner. This paragraph will be construed to permit Declarant (so long as Declarant owns any portion of the Development) to present for approval and obtain approval by the appropriate governmental authorities and to effectuate the recording of any Plat and

any amendment thereto or re-platting thereof. Notwithstanding the foregoing, the agency rights granted to Declarant pursuant to this paragraph will be applicable only with respect to those Lots which are owned by Persons other than Declarant whereby:

5.1.1 The boundaries, setback lines, and easements over such Lot will remain unchanged; and

5.1.2 The benefits of the Common Areas with respect to such Lot will be substantially equivalent (although not necessarily precisely equal).

**ARTICLE I
DEFINITIONS**

1.1 **Adjacent Lots.** Adjacent Lots are two Lots which, according to the Plat, share a common boundary and are identified by a common number followed by a letter distinguishable from their counterparts (for example, Lots 2A and 2B are Adjacent Lots). When used in the singular, "Adjacent Lot" shall mean one of two Adjacent Lots.

1.2 **Area of Common Responsibility.** Area of Common Responsibility will mean and refer to the Common Area, which becomes the responsibility of the Association. In addition, the office facilities and overhead of any property manager employed by or contracting with the Association and, if located on the Development, will be part of the Area of Common Responsibility.

1.3 **Association.** Association will mean and refer to the Woodberry Property Owners' Association, Inc., or an organization of similar name, formed, or to be formed, as an Indiana not-for-profit mutual benefit corporation, and its successors and assigns.

1.4 **Board.** Board will mean the Board of Directors of the Association.

1.5 **By-Laws.** By-Laws will refer to the By-Laws of the Association, as such by-laws may exist and be in effect from time to time.

1.6 **Common Area.** Common Area will mean all portions of the Real Estate and any Additional Land which have not been designated as Lots in the Plat, including any ponds, open space, landscape parcels, public or private streets, public street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor of the Association for the common use and enjoyment of the Owners as set forth in Article II hereof.

1.7 **Common Expenses.** Common Expenses will mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, and the Articles of Incorporation and By-Laws of the Association. Common Expenses will include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement, and replacement of the Common Areas, real estate taxes or personal property taxes

assessed against any Common Area, as well as any other costs or expense incurred by the Association for the benefit of the Common Area and the Owners.

1.8 Community-Wide Standard. Community-Wide Standard will mean the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board.

1.9 Construction. Construction will mean and include the erection or construction of a building, building accessory, staking, clearing, excavation, grading, or other site work.

1.10 Declarant. Declarant will mean Cribbs Danville, LLC and its successors and assigns.

1.11 Declaration. Declaration will mean this Declaration of Covenants, Conditions, Easements and Restrictions of Woodberry Planned Development, a Subdivision of Civil Center Township, Hendricks County, Indiana, as amended from time to time as provided herein.

1.12 Development. The Development will mean the Real Estate and all improvements thereon, the Duplexes, all Residential Units, and the Common Area.

1.13 Drainage System. Drainage System will mean and include all retention ponds and areas, detention ponds and areas, storm sewers, subsurface drainage tiles, swales, ditches, pipes, culverts, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Area, streets, or easements affecting one or more Lots, or property located outside the Development relating thereto; and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across the Development, including storm sewer lines and related facilities located on the property, for the benefit of the Development, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency. The Drainage System specifically includes, but is not limited to, those parcels shown as COMMON AREA "A", COMMON AREA "B", COMMON AREA "C", COMMON AREA "D", COMMON AREA "E", and COMMON AREA "F" on the Plat, and such parcels shall be used for no other purpose.

1.14 Duplex. Duplex will mean a single structure on a single two Adjacent Lots, together with all related improvements, consisting of two separate and distinct Residential Units.

1.15 Eligible Mortgage Holder. Eligible Mortgage Holder will mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as hereinafter and in the Association's By-Laws provided.

1.16 Eligible Votes. Eligible Votes will mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast. A Person owning more than one Lot will, if otherwise qualified, have more than one Eligible Vote. Eligible Votes may be cast at any meeting with simultaneous communication, whether in person, by telephone conference, or otherwise.

1.17 Land Use Standards. Land Use Standards will mean and refer to those standards, covenants, obligations, and restrictions as enumerated in this Declaration for the Development as hereinafter recorded and amended from time to time.

1.18 Lot. Lot will mean any parcel of land within the Development which, pursuant to the Plat, is improved or is to be improved with one or more Residential Units. Where the context indicates or requires, the term "Lot" includes all improvements on the Lot.

1.19 Majority. Majority means those Eligible Votes, Owners, or other groups as the context may indicate, totaling more than 50% of the total number of Eligible Votes.

1.20 Member. Member will mean and refer to a person or entity entitled to membership in the Association.

1.21 Mortgage. Mortgage means any mortgage, deed in trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.22 Mortgagee. Mortgagee will include a beneficiary or holder of Mortgage.

1.23 Mortgagor. Mortgagor will include the trustor of a deed of trust, as well as a mortgagor.

1.24 Owner. Owner will mean the record owner, whether one or more persons or entities, of any Lot, but excluding any party holding the fee simple title merely as Mortgagee. Owner may include Declarant. Only one Eligible Vote per Lot will be available despite multiple ownership of such Lot.

1.25 Person. Person means a natural person, a corporation, a general or limited partnership, a joint venture, a trust, the trustee of a trust, a limited liability company, or any other legal entity.

1.26 Plat. Plat will mean, collectively, all plats of survey of all or any portion of the Development (including Additional Land) or otherwise making reference to the Development which have been or hereafter may be recorded in the Office of the Recorder of Hendricks County, Indiana, as the same may be amended or supplemented by replats, amendments, or otherwise.

1.27 Real Estate. Real Estate will mean the real property situated in Hendricks County, Indiana, as described on Exhibit A hereto.

1.28 Residential Unit. Residential Unit will mean that part of a structure situated upon a Lot intended for use and occupancy as a residence by no more than one Single Family. For purposes of this Declaration, a Residential Unit will come into existence when substantially complete or upon the issuance of a certificate of occupancy by the local governmental entity or, in the case of

a Residential Unit on Lot 44, when such structure is first used as a residential dwelling. Each Residential Unit will comprise approximately one-half of each Duplex or, in the case of that Residential Unit on Lot 44, the Residential Unit will comprise the entire dwelling for a Single Family if, and at such time that, the structure on such Lot 44 becomes used for residential dwelling purposes.

1.29 Single Family. Single Family means one of (a) one or more persons related by blood, marriage, adoption, or if one or more of the persons are younger than 18 years of age ("Minor"), such Minor is under the custody of a person who is the legal custodian or is in the process of obtaining custody of the Minor or has permission of the parent or legal custodian of the Minor for domicile with that Minor or (b) two persons living and cooking together as a single housekeeping unit either or both of which may have Minors related by blood or the person is the legal custodian or is in the process of obtaining custody of the Minor or has permission of the parent or legal custodian of the Minor for domicile with that Minor.

1.30 Streets. Streets will mean all roadways, and related rights-of-way, streets and similar areas, designated as such on the Plat, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots. All or portions of the Streets may, in the discretion of Declarant, be dedicated to the public and accepted for maintenance by the appropriate public agency.

1.31 Supplemental Declaration. Supplemental Declaration will mean an amendment to this Declaration which adds additional property to that covered by this Declaration or otherwise imposes additional restrictions on all or any portion of the Development or otherwise amends this Declaration.

**ARTICLE II
PROPERTY RIGHTS**

2.1 In General. Except as otherwise provided herein, every Lot in the Development will, after a Residential Unit is placed thereon, be used only as, and will contain only, a Duplex or, in the case of Lot 44, a dwelling for Residential Unit as part of a Duplex. Lot 44 contains a structure which, unless and until it becomes used for residential dwelling purposes, may be used for commercial office purposes. If and at such time that the structure located on Lot 44 becomes used for residential dwelling purposes, it shall be used as a dwelling for only a Single Family. No Lot will be resubdivided except pursuant to any Plat and all terms, limitations, restrictions, and requirements as shown or described on the Plat shall apply to the use and maintenance of any Lot or area within the Development. Except as otherwise provided herein, all parcels and tracts of land located within the Development which are not designated as Lots on the Plat will be Common Area, and they and all areas in the Development will be used in a manners consistent with the zoning and use designated by all development plans pursuant to any planned unit development district ordinances, other zoning ordinances and municipal requirements, and uses designated by or described in such Plat, by this Declaration, or pursuant to the conditions designated by Declarant or by the Association.

The Common Area will, except as otherwise provided herein, remain private, and except as otherwise provided herein neither Declarant's execution or recording of the Plat nor the doing of any other action by Declarant is, or is intended to be, or will be construed as, a dedication to the public of the parcel. A license for the use and enjoyment of the Common Area is or will be granted by Declarant, its successors, and assigns or by the Association, or both, to the persons who are from time to time members of the Association, but only to the extent consistent with the terms of this Declaration. Said license will be on the terms and conditions deemed appropriate by the grantor of said license. Ownership of the Common Area, or any portion thereof, will be conveyed from time to time as determined by Declarant in its discretion in fee simple title, free of financial encumbrances, to the Association. Such conveyance will be subject to easements and restrictions of record, and such other conditions as Declarant may at the time of such conveyance deem appropriate. Such conveyance will be deemed to have been accepted by the Association and those persons who are, from time to time, members thereof upon the recording of a deed or deeds conveying said Common Area to the Association.

2.2 Owner's Rights of Enjoyment.

2.2.1 Every Owner will have a right by license of ingress and egress, use and enjoyment in and to the Common Area, which right and license will be appurtenant to and will pass with the title to every Lot subject to:

2.2.1.1 the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

2.2.1.2 the right of the Association to suspend an Owner's voting rights, both as a Member and as an Owner, and to suspend the right to use any of the Common Area and facilities for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed 30 days;

2.2.1.3 non-exclusive easement rights of all occupants of Residential Units and all invitees and guests thereof for pedestrian access to and across all sidewalks which are situated in the front yard of such Lot and are parallel or substantially parallel to the front Lot line of such Lot, as installed in the original construction of any Duplex or Residential Unit, and the right of the Association to enter onto such Lot for the purpose of fulfilling the obligations of the Association pursuant to this Declaration to the extent that such sidewalks are not required hereunder to be maintained by the Association, the Owner of such Lot will maintain such sidewalks in good and sightly condition;

2.2.1.4 the rights of Declarant and the Association, or either of them, to grant easements in and to the Common Area contained within the respective portions of the Development to any public agency, authority, or public or private utility for such purposes which will benefit the Development or portions thereof or Owners or Lots contained therein;

2.2.1.5 the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3) of all Owners present or represented by proxy at a meeting called for such purpose approve; provided, however, the lien and encumbrance of any such mortgage given by the Association will be subject and subordinate to any and all rights, interest, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Development; and

2.2.1.6 the terms, limitations, restrictions, and requirements as shown or described on the Plat.

2.2.2 This Section 2.2 may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

2.3 Owner's Rights to Ingress and Egress. Each Owner will have the right to ingress and egress over, upon, and across those portions of Common Area demarcated on the Plat as COMMON AREA "A" and WOODBERRY DRIVE necessary for access to such Owner's Lot and such other easements as may be designated on the Plat for access to the Common Area. Such rights will be appurtenant to and will run with title to each Lot.

2.4 License for Encroachment. Some Residential Units may be partially located upon or encroach on an Adjacent Lot as of the date of this Declaration. To the extent any such encroachment exists, the Owner of each Adjacent Lot hereby grants to the Owner of the adjoining Adjacent Lot an exclusive license to permit the continued location of such Residential Unit in such manner and for the maintenance, reconstruction and replacement thereof.

2.5 Party Walls, Common Roofs and Common Foundations. Each wall that is a part of the original construction of a Residential Unit that is placed on or about the dividing line between Adjoining Lots shall constitute a party wall. A Residential Unit may jointly use certain footings and foundations with the Residential Unit on an Adjoining Lot. A Residential Unit may also jointly use its roof with the Residential Unit on an Adjoining Lot. The cost of reasonable repair, maintenance,

reconstruction and replacement of a party wall and jointly used footings, foundations and roofs shall be shared by the Owners in proportion to such use.

2.6 Use of Lots.

2.6.1 Except as may be otherwise expressly provided in this Declaration, each Lot will be used for residential purposes only as a Residential Unit (as part of a Duplex) for no more than two one Single Families Family or, in the case of Lot 44, as commercial office space or as a dwelling for a Single Family pursuant to Section 2.1. No trade or business inconsistent with the residential use of Residential Units and the residential character of the Development may be conducted on any Lot, except as otherwise provided with respect to Lot 44. Lease or rental of a Lot or Residential Unit will not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board may promulgate, or in the absence of such rules and regulations, with the prior written approval of the Board. Any lessee or tenant will in all respects be subject to the terms and conditions of this Declaration, the By-Laws, and the rules and regulations adopted hereunder.

2.6.2 Without the prior written consent of the Board, nothing will be done or kept on any Lot or on the Common Area or any part thereof to increase the rate of insurance on the Development or any part thereof over what the Association or any other Owner, but for such activity, would pay. Noxious, hazardous, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, will not be conducted on any Lot or on the Common Area or any part thereof, and the Association will have standing to initiate legal proceedings to abate such activity. Each Owner will refrain from any act or use of such Owner's Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board will have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

2.7 Use of Common Areas. Except as may be otherwise expressly provided in this Declaration, each Lot (except Lot 44 as otherwise described herein) will be used for residential purposes only as a Residential Unit Duplex. Except as described in this Section 2.7, no fences, hedges, walls or any other structure or planting shall be erected or maintained upon the Common Area or upon any Lot, except in accordance with the initial construction of the improvements located thereon by the Declarant or as approved in writing by the Association's Board. The Association shall construct and maintain a border fence along the southern boundary of the Real Estate, which boundary is current shared with Hendricks County Bank; however, such border fence shall not be required to serve as a privacy fence and may be of any height not exceeding the maximum legal height. No antennas may be erected upon the Common Area, except the Association may erect a master antenna serving the members. Except for the right of ingress and egress, the Owners of Lots may use property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein.

It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners. Notwithstanding any

provision of this Declaration to the contrary, no part of the Drainage System, whether situated upon the Common Area or not, may be used, occupied, or accessed in any manner inconsistent with its use as part of the Drainage System.

2.8 Signs. Except as otherwise provided herein, no advertising signs, "for sale" signs on vacant Lots, "for rent" signs, billboards, unsightly objects, or nuisances will be erected, placed, or permitted to remain on any part of the Real Estate. Two political yard signs (each not larger than nine square feet in size) may be placed in yards 30 days prior to a primary, general or special election but must be removed on the day following said election.

2.9 Rules and Regulations. The Association may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, Residential Units and individual Lots. Copies of such regulations and amendments thereto will be furnished by the Association to all Owners prior to the rules' effective date. Such regulations will be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement is specifically overruled, canceled, or modified by the Association by the Board or in a regular or special meeting by the vote of Owners holding a two-thirds (%) majority of the Eligible Votes. The Board will have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure, as provided in Article IX. In addition, the Association, through the Board, may, by contract or other agreement, enforce municipal ordinances or permit the municipality having jurisdiction to enforce ordinances affecting the Development for the benefit of the Association and its Members.

2.10 Exterior Lighting. Declarant may adopt and designate a standard exterior light fixture to be located on all Duplexes and Residential Units in the Development and may designate a standard locations for such exterior light fixtures. No yard lights may be installed by an Owner. No exterior lighting fixture, other than those fixtures approved by Declarant will be installed on any Lot or on the exterior of any Residential Unit. No lighting fixtures will be installed that may become an annoyance or a nuisance to Owners or occupants of adjacent properties. All modifications of exterior lighting must be approved in writing by Declarant or the Association.

2.11 Storage and Parking Vehicles. There will be no outside storage or parking upon any Lot, street, private drive, or the Common Area of any commercial vehicle, truck, van, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, travel-trailer, recreational vehicle, snowmobile, motorcycle, oversized vehicle of any kind, or boat or other watercraft, boat trailer, except for providers of services temporarily parking in driveway or street and in accordance with rules and regulations designated and promulgated by the Board. No unlicensed automobiles will be parked longer than 48 hours within any seven day period on any of the Streets or any Lot in the Development. No Owners or tenants will repair or restore any vehicle of any kind upon any Lot, street, private drive, or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

For purposes of the preceding, commercial vehicle will also include any and all automobiles, station wagons, mini-vans, and utility vehicles which bear signs or have printed on the side of same a reference to any commercial undertaking or enterprise.

2.12 Pets. No animals, livestock, or poultry of any kind will be raised, bred, or kept on the Development, except that no more than a total of two animals (dogs, cats, or other larger household pets) may be kept in residences subject to rules and regulations adopted by the Association through the Board, provided that such pets are not kept, bred, or maintained for any commercial purpose. The Board will have the absolute power to prohibit a pet, or any reasonably established class of pets (including but not limited to any specified type of animal other than dogs and cats, and any particular breeds of dogs and/or cats), from being kept on any Lot in the Development, including inside Residential Units. Excessive barking by dogs will be considered a nuisance requiring abatement.

No animal shelters, containment pen structures or exercise run areas, enclosed or open, will be permitted, placed or erected on any Lot without the approval of the Board.

2.13 Nuisances. No outside toilets will be permitted on any Lot in the Development (except during a period of construction and then only with the consent of Declarant or Board), and no sanitary waste or other wastes will be permitted to enter the storm drainage system. No discharge from any floor drain will be permitted to enter into the storm drainage system. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Declarant, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, will become a charge of lien upon the offending Lot occupant, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. No noxious or offensive activities will occur on any Lot or in any Residential Unit, nor will anything be done on any of said Lots or in any Residential Unit that will become or be an unreasonable annoyance or nuisance to any owner of another Lot or Residential Unit in the Development. Neither Declarant, nor any partner, agent, employee or contractor thereof, the Association, nor any Owner enforcing the provisions of this Section will be liable for any damage which may result from enforcement hereof. No grass clippings or other materials may be deposited on an Owner's Lot in heaps or on vacant Lots in any way.

2.14 Garbage, Trash and Other Refuse. No occupant of a Lot will burn leaves or permit the burning of garbage or other refuse, nor will any such occupant accumulate or permit the accumulation of such refuse on such occupant's Lot except as may be permitted in Section 2.15 below.

2.15 Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish or garbage will be installed, placed and kept as not to be visible from any street within the Development at any time, except one day per calendar week at the time when refuse collections are being made, at which time one such receptacle per Residential Unit may be placed in an accessible location for trash collection. If the municipality having jurisdiction does not commence trash collection services, or discontinues trash collection services, the Association may designate a trash collection day and a trash collection service to be used and paid for by Owners in the Development in furtherance of this

Section. Additionally, the Association may enter into a master contract for trash collection with a refuse disposal service with the costs thereof to be included as a Common Expense of the Association to be paid by Owners as part of their normal assessments. Additionally, the Association may designate a standard trash container as acceptable by the municipality having jurisdiction or a private disposal company, all at the expense of each Owner, if applicable.

2.16 Temporary Structures. No temporary structure, including, but not limited to a house (other than a Duplex or Residential Unit), trailer, tent, garage, storage shed, or other out building, regardless of construction materials used, will be placed or erected on any Lot, nor will any overnight camping be permitted on any Lot excepting occasional lot owner's children "camp-out" activities.

2.17 Utility Services. No utility services will be installed under any paved areas in the Development, except by jacking, drilling, or boring unless specifically approved by Declarant (or, the Association, after Declarant turns over control, or after acceptance of such areas by the municipality having jurisdiction). All utility facilities in the Development will be underground, except where required to be placed above ground by the individual utility supplier.

2.18 Wells and Septic Tanks. No water wells will be drilled on any of the Lots in the Development without the approval of Declarant or Association. No septic tanks will be installed on any of the Lots or in any of the Common Area.

2.19 Antennas and Solar Heat Panels. No exposed radio or TV antennas, satellite dish antennas over 20 inches in diameter, or solar heat panels will be allowed on any Lot, which is visible from the front of such Lot without the approval of the Board.

2.20 Mailboxes and Address Identification. Declarant will select and designate a standard mailbox, post, and individual address identification devices for the Development. No exterior newspaper receptacles will be permitted in the Development, except when integrated with the mailbox as approved by the Board. All standard mailboxes, posts, and identification devices will be consistent in color, quality and appearance with the original mailbox, post, and identification devices unless the advance written approval of Declarant or Board is obtained.

2.21 Use of Yards. No clotheslines, outside storage, or other similar uses of yards which may prove detrimental to the value of the adjoining Lots will be permitted. Playground equipment and flag poles of standard sizes and heights as determined by the Board and specified in the rules and regulations are permitted on Lots if approved in advance by the Board.

2.22 Maintenance of Lots and Improvements. The Owner of any Lot in the Development, or a responsible management company retained by Owner, shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly, and, specifically, such Owner (or such company) shall:

2.22.1 Mow and water grass upon the Lot and provide fertilizer and weed control at such times as may reasonably be required in order to prevent the unsightly growth of

vegetation and noxious weeds. No plants or seeds, or other things or conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot.

2.22.2 Remove all debris or rubbish.

2.22.3 Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

2.22.4 With the approval of the Board or appropriate Committee, cut down and remove dead trees.

2.22.5 Keep the exterior of all improvements in such a state of good repair and maintenance so as to provide for an aesthetic appearance and as required to avoid their becoming unsightly.

The opinion of the Board will be binding with respect to said subjective judgments. Notwithstanding any other provision of this Declaration, the Association may elect to do the work described in this Section 2.23 for each and every Lot and charge such costs and expenses as Common Expenses.

2.23 Ditches, Swales, and Waterways. It shall be the duty of every Owner of every Lot to keep any ditches, swales, waterways, or storm drainage portion areas as may be situated upon his Lot continuously unobstructed and in good repair and to repair all erosion with respect to such areas situated on such Owner's Lot even if said ditch or swale or waterway is not specifically referenced by an easement on the plat or elsewhere.

2.24 Storage Tanks. No underground storage tanks, and no attached above-ground storage tanks will be permitted for the storage of gasoline, propane, kerosene, or other fuels.

2.25 Motor Vehicles. No minibikes, go-carts, snowmobiles, powerboats (electric or gas) or similar motor-driven vehicles will be operated within the Development. This restriction will not restrict the use of toys manufactured for children under the age of nine.

2.26 Soliciting.

2.26.1 Subject to Constitutional protection, if applicable, no person may enter upon any Common Area for purposes of commercial solicitation, except upon the express authorization or invitation of the Association, upon application for a permit for such purposes by a Member of the Association, provided, however, that this rule will not prohibit the use of said Common Area by Declarant for purposes of advertising, solicitations and sale of any of the properties within the Development, so long as Declarant owns any properties therein.

2.26.2 No garage sales nor public auctions will be permitted in the Development except by the approval of the Association.

2.27 **Swimming Pools.** No above-ground swimming pools will be installed on any Lot.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

3.1 **Membership.** Every Owner of a Lot will be a member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Lot.

3.2 **Classes of Membership and Voting Rights.** The Association will have one class of voting membership which will be comprised of all Owners, without regard to whether there are Residential Units on such Owners' Lots. Each Owner will hold one membership for each Lot owned and will be entitled to one vote for each Lot owned, except as otherwise specifically provided herein. When more than one person holds an interest in any Lot, all such persons will be members. The vote for such Lot will be exercised as such co-owners among themselves determine evidenced by a certificate signed by all such Owners filed with the Association. Such signed certificate will also be conclusive with respect to voting rights of an Owner in instances where such Owner's voting is referred to in this Declaration. In no such event will more than one vote be cast with respect to any Lot either with respect to Association membership or Lot ownership.

3.3 **Board of Directors.** The Members will elect a Board of Directors of the Association (the "Board") as prescribed by the Association's By-Laws. There will be three members of the initial Board of Directors, and subsequent Boards will have such numbers of members as may be provided in the By-Laws, provided that the By-Laws will not provide for less than three members of the Board. The Board will manage the affairs of the Association. The initial Board will be appointed by Declarant and will manage the affairs of the Association in accordance with Section 3.6 herein.

3.4 **Professional Management.** The Board shall enter into any contract or agreement for professional management of the Association and its responsibilities hereunder so long as the Danville Town Council requires such professional management; if the Danville Town Council, or its equivalent, agrees by majority vote that such professional management is not required, the Board may, but is not required to, be a party to such contract or agreement thereafter.

3.5 **Responsibilities of the Association.** The Association is hereby authorized to maintain, repair, and replace the Common Area, to determine Common Expenses, to collect annual and special Assessments, and to grant any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Association will also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents will have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration as for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the

rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association will procure and maintain casualty insurance for the Common Area, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable. The Association may contract for such services as management, snow removal, security control, lawn care, trash removal, exterior maintenance and repair and such other services as the Association deems necessary or advisable.

3.6 Initial Governance of Association. Immediately following the incorporation of the Association, Declarant shall elect its directors. Such directors may adopt a Code of By-Laws and shall be entitled to serve their full terms as directors pursuant to such Code of By-Laws and the Association's articles of incorporation.

**ARTICLE IV
COMMON MAINTENANCE**

4.1 Maintenance by Association. The Association will maintain and keep in good repair the Area of Common Responsibility, which responsibility will be deemed to include the Common Area. The maintenance of the Common Area will be deemed to include, but not to be limited to, maintenance, repair, and replacement (subject to later reimbursement from the insurance and casualty loss provisions contained at the Association's sole cost and expense as Common Expense) of all of the following located on the Common Area: trees, fences, shrubs, grass, signs, Common Area access and parking spaces, if any, walks, trails, pedestrian bridges, Drainage System improvements (unless contracted otherwise to a public agency), the Common Area lighting and watering systems and other improvements situated upon the Common Area. The Association may, at its discretion, leave appropriate portions of the Common Area unmaintained to produce a "natural effect" for a natural habitat.

In addition, the Association will maintain, replace and keep in good repair the planting and landscape areas to include electrical and watering systems thereon located in and upon the public street cul-de-sac circular areas (if any) and the entry way median strips and all parcels designated on the plat or otherwise situated at various Lots in the Development as Common Area.

In addition, the Association will maintain and keep in good repair the street name signs (unless installed and maintained by the municipality having jurisdiction) located on private streets in the Development.

In addition, the Association will pay for any utility consumption costs such as natural gas, electricity and water which serve the Common Area, and the Association shall pay for all water utility consumption in accordance with Section 4.4 hereof.

In addition, the Association will cut grass in its locations upon all Lots in a manner and to an extent acceptable to the Board.

4.2 Liabilities of Owners. If the Board determines that (I) any Owner has failed or refused to discharge properly such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner 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, or such Owner's family, guests, tenants, 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, will give such 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 will set forth with reasonable particularity the maintenance, repairs, or replacement required and will advise the Owner to complete the same within three days from the date of such notice; provided, however, that if the same is not capable of completion within the three day period, such notice will advise the Owner to immediately commence such work which will be completed within a reasonably specified time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at owner's sole cost and expense, and the cost will be added to and become a part of the assessment to which such owner is subject and will become a lien against the Lot as provided in Article X and elsewhere herein.

4.3 Excess Costs. With respect to Common Areas, the cost of snow removal, landscaping maintenance and road maintenance, if any, in excess of amounts budgeted therefor will be paid by the Owners (on the same basis as assessments for Common Expenses are allocated by the Owners as described in Section 9.3) by a Special Assessment pursuant to Section 9.4. If the Association enters into contracts for snow removal, landscaping maintenance and road maintenance, if any, while Declarant controls the Association, the Association will indemnify and hold Declarant harmless from all liability and obligations with respect thereto in its capacity as Declarant but not in its capacity as Lot Owner. This Section is included herein in recognition of the fact that the costs of snow removal, landscaping maintenance and road maintenance, if any, for the Development may substantially exceed amounts budgeted therefor the Association due to inordinate snowfall, an inordinate number of snowfalls during any season, general weather conditions, agricultural conditions and amount of use. In the event snow removal service is to be provided for the Development an amount therefor will 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 therefor is insufficient to defray the actual snow removal costs.

4.4 Common Water Utility Usage. The Development shall be served by a single, private water utility line located within utility easements shown on the Plat. Such water utility line shall serve as the source of all water for each Lot, and shall have a single meter by which gross water usage within the Development shall be measured on a regular basis by the public or private utility company providing service to such line. The Association shall pay all fees for gross water usage based on the single meter serving such single water line; however, each Lot containing improvements shall be equipped with a separate submeter, which submeter shall be used to determine water usage on such Lot. Each Owner shall be required to install and maintain the submeter at such Owner's expense and shall, on a regular basis as may be determined by the Board, reimburse the Association for a proportionate share of water utility fees corresponding to water usage on such Owner's Lot (the

“Water Reimbursement”). The difference between gross water fees paid by the Association and cumulative reimbursements from all Owners (“Common Water Usage”) will be included among the Common Expenses assessable to each Lot and subject to liens in accordance with Article IX hereof.

**ARTICLE V
INSURANCE**

5.1 Insurance.

5.1.1 Insurance of Common Area. The Board, or its duly authorized agent, will have the authority to and will obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance will 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.

5.1.2 Liability Insurance. The Board will also obtain a public liability policy covering the Common Area, the Association, and its members for all damage or injury caused by the negligence of the Association of any of its Members or agents. The public liability policy will have at least a \$500,000 single person limit as respects bodily injury and property damage, a \$1,000,000 limit per occurrence, and a \$250,000 minimum property damage limit. Premiums for all insurance on the Common Area will be common expenses of the Association. The policy may contain a reasonable deductible amount and the deductible amount thereof will be added to the face amount of the coverage limitations of the policy in determining whether the insurance at least equals the full replacement cost.

5.1.3 Standards for Insurance. All such insurance coverage obtained by the Board will be written in the name of the Association as trustee and will add the officers and directors from time to time as additional insureds, such insurance as hereinabove described for the respective benefitted parties, as further identified elsewhere. Such insurance will be governed by the provisions hereinafter set forth:

5.1.3.1 All policies on the Common Area will be for the benefit of the Owners and their Mortgagees as their interests may appear;

5.1.3.2 Exclusive authority to adjust losses under policies in force on the Development obtained by the Association will be vested in the Board; provided, however, no mortgagee, if any, having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

5.1.3.3 In no event will the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with

insurance purchased by individual Owners, occupants, or their Mortgagees; and

5.1.3.4 The Board will 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 Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurance company of its rights to repair, and reconstruct, instead of paying cash;

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

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior damage 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 Owner's policies from consideration;

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association; and

(vii) that all casualty insurance policies will have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one of more qualified person, at least one of whom must be in the real estate industry and familiar with real estate development and management in the Hendricks County area.

5.1.4 Other Insurance. In addition to the other insurance required by this Section, the Board will obtain, as a Common Expense, worker's compensation insurance and, if and to the extent necessary in the Board's sole and absolute discretion, a fidelity bond or bonds with respect to directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage, if any will be determined in the

Board's best business judgment. Such bonds, if any, will contain a waiver of all defenses based upon the exclusion of persons serving without compensation.

5.2 Individual Insurance.

5.2.1 Required Insurance. By virtue of taking or holding title to a Lot which contains one or more Residential Units, each Owner covenants and agrees with all other such Owners and with the Association that such individual Owner will carry all-risk casualty insurance on such Owner's Residential Units in an amount of full replacement cost, general liability coverage for a minimum of \$300,000 per occurrence, and \$2,000 medical payment coverage per person. Each such Owner will provide the Association with a certificate evidencing such liability coverage when taking title to said Residential Units. Each such Owner will provide a certificate of insurance evidencing such casualty insurance immediately prior to taking title to such Lot. Such certificates will be furnished upon each renewal date to the Association to provide continuous evidence of adequate insurance coverage.

5.2.2 Rebuilding of Residential Units. Each individual Owner further covenants and agrees that in the event of the loss, damage or destruction of any Residential Units resulting in total or less than total destruction, the individual Owner will proceed promptly to either (1) repair or to reconstruct the damaged structure in a manner consistent with the original construction or (2) clear its respective Lot of all debris and return such Lot to substantially the natural state in which it existed prior to the beginning of construction, subject to all other requirements, conditions, and restrictions herein described. The Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures and the standard for returning Lots to their natural state in the event an Owner decides not to rebuild or reconstruct.

5.3 Disbursement of Proceeds. Proceeds of insurance policies on Common Area Improvements will be disbursed as follows:

5.3.1 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, will be disbursed in 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, will be retained by and for the benefit of the Association and placed in a capital improvements account.

5.3.2 If it is determined that the damage or destruction to the Common Area for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed in the manner as provided for excess proceeds in Section 5.3.1.

5.4 Damage and Destruction.

5.4.1 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, or its duly authorized agent, will 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 they existed prior to the fire or other casualty.

5.4.2 Any damage or destruction to the Common Area will be repaired or reconstructed unless at least 75% of the total Eligible Votes decide within 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 will be extended until such information will be made available; provided, however, such extension will not exceed 60 days. No mortgagee will have the right to participate in the determination of whether the Common Area damage or destruction will be repaired or reconstructed.

5.4.3 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 will not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Development will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

5.5 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 will use general funds or seek a special assessment as permitted in Section 9.4.

**ARTICLE VI
NO PARTITION**

6.1 No Partition. Except as permitted in this Declaration, or any Supplemental Declaration, there will be no physical partition of the Common Area or any part thereof, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial participation unless the applicable portions of the Development have been removed from the provisions of this Declaration. This Article will not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

**ARTICLE VII
CONDEMNATION**

7.1 Condemnation. Whenever all or any part of the Common Area is taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by an authority having the power of condemnation or eminent domain, each Owner will be entitled to notice thereof. The award made for such taking will be payable to the Association as trustee for all Owners to be disbursed as follows:

7.1.1 If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within 60 days after such taking a vote of at least 75% of the Eligible Votes directs otherwise, the Association will restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article V, Section 5.3 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired, will apply.

7.1.2 If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds will be disbursed to the Association and used for such purposes as the Board determines.

**ARTICLE VIII
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

8.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and will keep in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the By-Laws of the Association.

8.2 Duty To Comply With Easements Benefitting The Development. Declarant may enter into easement agreements or similar agreements with neighboring land owners for the benefit of the Development. The Association will be responsible to fulfill the duties and obligations of Declarant and to protect the rights and interest granted to the Development pursuant to such agreements. Declarant may enter into additional private easements for the benefit of the Development or neighboring land owners. The Association will be responsible to fulfill the duties and obligations of Declarant as set forth in any future easements which affect the Development and are entered into by Declarant.

8.3 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association will determine to be necessary or desirable for the property operation

of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration. The Association may, but will not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn and landscaping service and other common services to each Lot. The Association will provide the services required of it by the Supplemental Declarations, if any.

8.4 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests hereafter annexed into the Development and conveyed to it by Declarant.

8.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, or the By-Laws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.6 Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent will have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board will give the violating Lot Owner five days written notice of its intent to exercise Association remedial activity (self-help). All costs of such Association remedial activity (self-help), including attorneys' fees actually incurred will be assessed against the violating Owner and will be collected as provided for herein for the collection of assessments. No liability will be assumed by the Association's exercise of such remedial activity.

**ARTICLE IX
ASSESSMENTS**

9.1 Purpose of Assessment. The assessments for the Common Area and Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

9.2 Creation of Assessments.

9.2.1 There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board. General assessments and special assessments will be allocated among all Owners of Lots which include Residential Units within the Association pursuant to Section 9.3 hereof and will be for capital improvements

and expenses determined by the Board to be for the benefit of the Association as a whole or otherwise as provided in this Declaration. Each Owner, by acceptance of such Owner's deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law will be a charge on the land and will be a continuing lien upon the Lot against which each assessment is made.

9.2.2 Each such assessment, together with interest, costs, and reasonable attorneys' fees, will also be the joint and several personal obligation of the person or persons who were the Owner(s) of such Lot containing any one or more Residential Units at the time the assessment arose, and such Owner's grantee will be jointly and severally liable for total unpaid assessments as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage will be liable for unpaid assessments which accrued prior to such acquisition of title by such lender. Assessments will be paid in such manner and on such dates as may be fixed by the Board which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessments for delinquents. Unless the Board otherwise provides, all assessments will be paid annually within 30 days after the date of the billing.

9.3 Computation of Assessment.

9.3.1 Budget. It will be the duty of the Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget is to be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. In accepting bids and/or estimating Common Expenses prior to preparing the budget, the Board will separate the Common Expenses to the extent necessary to allocate said expenses among Lot Owners as set forth below. If and to the extent applicable, the budget will include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and will separately list Common Expenses.

9.3.2 Amount of Assessments. Common Expenses shall be allocated among Owners in the Development on an equal per lot basis. Where contiguous Lots are combined and approved as one building site, the allocated value is "one" Lot. Each Owner of any Lot or approved combined Lot building site (including any Residential Units) in the Development hereby covenants and agrees to pay to the Association a Proportionate Share (as hereinafter defined) of the annual Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Proportionate Share of each Owner in the Development shall be the percentage obtained by dividing "one" by the total number of Lots (or building sites if contiguous Lots are combined) shown on the Plats of the Development as the same may be recorded from time to time Plat and owned by Owners (including Declarant). The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Lot for the following year to be delivered to each

Owner at least 15 days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting addressing Common Expenses by a vote of at least a two-thirds (2/3) Majority (present or by proxy) of the total Lot Owners.

9.3.3 Failure to Approve Budget. Notwithstanding the foregoing, however, if the Members disapprove the proposed budget or if the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as the budget has been determined as provided herein, the budget in effect for the then current year will continue for the succeeding year.

9.3.4 Deficits. If 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 fiscal year, the amount of such deficit will be carried over and become the first item comprising the next year's budget as an additional basis for assessments for the following fiscal year

9.3.5 Limitation on Increases. In each year thereafter, the total assessments per Lot per month for Common Expenses will not be increased by more than the greater of 10% over the prior year or \$50.

9.4 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments does not exceed 0.05% of the gross assessed value (as determined by the applicable township assessor) of all Lots (including improvements thereon) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation will be effective only if approved by a two-thirds (2/3) majority of the Eligible Votes, present in person or by proxy. Special assessments will be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. This Section 9.4 will not apply to assessments levied pursuant to Section 4.3 hereof.

9.5 Lien for Assessments.

9.5.1 All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, will be secured by a lien on such Lot in favor of the Association. Such lien or a notice thereof may be recorded by the Association with the Hendricks County Recorder; however, recordation of any lien or notice thereof shall not be required to make any such lien valid. Such lien will be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Hendricks County, Indiana, and all amounts advanced to such respective Mortgage or Mortgages and secured thereby in accordance with the terms of such instrument.

9.5.2 All other persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded in the Office of the Recorder of Hendricks County, Indiana, will be deemed to consent that such liens or encumbrances are and will be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

9.5.3 For purposes of this Article IX, all Water Reimbursements or amounts due therefor and assessments for or attributable to Common Water Usage (as described in Section 4.4 hereof) shall result in liens on corresponding Lots in favor of the Association in the same manner as assessments for any other purpose described in this Declaration.

9.6 Effect of Nonpayment of Assessments: Remedies of the Association.

9.6.1 Lien Rights. Any assessments which are not paid when due will be delinquent. Any assessment delinquent for a period of more than 10 days will incur a late charge in an amount as the Board may from time to time determine. The Association will cause a notice of delinquency to be given to any member who has not paid within 10 days following the due date. If the assessment is not paid within 30 days from the due date, a lien, as herein provided, will attach and, in addition, the lien will include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid 60 days from the due date, the Association may, as the Board determines, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, or all persons or parties in title, jointly and severally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property (*i.e.*, mechanics and materialmen's liens). The lien provided for in this Article will be in favor of the Association and will be for the benefit of all other Owners. The Association, acting on behalf of the Owners, will have the power to bid on the Lot at any foreclosure sale or to acquire and to hold, lease, mortgage, or convey the Lot. No Owner may waive, purge himself, or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. Notwithstanding any provision in this Declaration to the contrary, any lien in favor of the Association or arising out of the Association's powers of imposing assessments hereunder shall become and remain a valid lien encumbering the corresponding Lot or Lots regardless of whether such lien or any notice thereof has been recorded or filed with the Office of the Recorder of Hendricks County or any other governmental authority.

9.6.2 Priority of Application of Payment. All payments will be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any

unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

9.6.3 Suspension of Voting Rights. If any assessment with respect to any Lot is not paid within 30 days from the due date thereof, the Board may suspend the voting rights of the delinquent Owner with respect to such Lot. Upon and during such suspension, the vote with respect to such Lot will not constitute one of the Eligible Votes. Such voting rights will cease to be suspended when all delinquent assessments with respect to such Owner's Lot are paid.

9.7 Capital Budget and Contribution. The Board will annually prepare a capital budget which will take into account the number and nature of replacement costs for the Common Area. The Board will set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect to both amount and timing of need for funds by annual assessments over the period of the budget.

9.8 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, will be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot will not affect the assessment lien, and no sale or transfer will relieve such Lot from lien obligations for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, such Mortgagee's successors and assigns will not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lots by such acquirer. Such unpaid share of Common Expenses will be deemed to be Common Expenses collective from all the Lots which include Residential Units, including such acquirer and all successors and assigns thereof. Such procedure will not discharge the former Owner from personal liability for such unpaid assessment.

9.9 Date of Commencement of Annual Assessments. The annual assessments provided for herein will commence as to all Lots subject to assessment under this Declaration on the first day of the sixth month following the conveyance of the first Lot which includes one or more Residential Units by Declarant to an Owner or the completion of a Residential Unit on a Lot by an Owner other than Declarant and will be due and payable in a manner and on a schedule as the Board may provide. The first annual assessment will be adjusted according to the number of months then remaining that fiscal year. The date any Lot becomes subject to assessment hereunder will be the date on which such Lot is transferred by Declarant to an Owner.

9.10 Assessments by Declarant.

9.10.1 After the commencement of assessments on any Lot, Declarant will be liable for and agrees to pay the full amount of the annual assessment (prorated for partial years, if applicable) for each Lot which includes one or more Residential Units which is owned by Declarant.

9.10.2 Notwithstanding anything to the contrary herein, Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in-kind contribution"). The amount by which monetary assessments will be decreased as a result of any in-kind contribution will be the fair market value of the contribution. If Declarant and the Association agree as to the value of any contribution, the value will be as agreed. If the Association and Declarant cannot agree as to the value of any contribution, Declarant will supply the Association with a detailed explanation of the service performed and material furnished, and the Association will acquire bids for performing like services and furnishing like materials from three independent contractors approved by Declarant who are in the business of providing such services and materials. If the Association and Declarant are still unable to agree on the value of the contribution, the value will be deemed to be the average of the bids received from the independent contractors.

**ARTICLE X
ARCHITECTURAL STANDARDS**

10.1 Architectural Standards Jurisdiction. The Board will have the authority and standing, on behalf of the Association, to enforce its decisions in courts of competent jurisdiction. No construction, as defined herein, will take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Board has been obtained. For purposes of this Section, "Construction" will mean:

10.1.1 Original construction of any kind;

10.1.2 Modifications, additions, or alterations of any kind;

10.1.3 Staking, clearing, excavating, grading and other site work;

10.1.4 Installation of lawn carpeting, fences, walls, awnings, swimming pools, playground equipment, basketball goals, mailboxes, yard light fixtures, or any other structure or appurtenance of any kind.

It is understood and agreed that the purpose of architectural regulations and controls is to secure an attractive, harmonious residential development having continuing appeal by assuring materials and design elements are harmonious in conjunction with the way building and improvements relate to each other and the environment.

10.2 Board Authority: The Board will have exclusive jurisdiction over all Construction, renovation, and remodeling on Lots and on the open space, if any, on any portion of the Development appurtenant thereto, provided; however, the Board may create or designate one or more committees for the purpose of considering and ruling on such matters and delegate this authority to such committee or committees so long as the Board has determined that such committee or committees has in force review and enforcement practices, procedures and appropriate standards at least equal

to those of the Board. Such delegation may be revoked and jurisdiction reassumed at any time by written notice by the Board. No permission or approval will be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein will be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired.

10.3 Procedures for Approval. Approvals required by this Article will be in written form by the Board or appropriate Committee, and will be forthcoming only after written application has been made and application fee paid, if any, to the Board or appropriate Committee by the Owner of the Lot requesting authorization. Such written application will be in the manner and form prescribed from time to time by the Board or applicable Committee and will be accompanied by four of all of the following:

10.3.1 Two Complete sets of plans and specifications drawn to scale setting forth the nature, kind, shape, height, color and composition of all exterior materials proposed to be used; and the square footage, level by level, as well as the total square footage of the residence (excludes below grade).

10.3.2 Plot plan drawn to scale showing street(s) location, all lot dimensions; all structures proposed or existing on the lot, their size, location and distance from each other and to adjacent property or right-of-way lines; location/width of driveway(s); location/width of sidewalk(s); required setback distances from property or rights-of-way; topography and physical features. Indicate elevation of the proposed improvement as it relates to the existing street elevation and adjoining land(s). All elevations must comply with the original master engineering plan which specify finished floor elevations. Elevations shown on the master plans are guidelines and may be altered by the Board when needed to conform to existing conditions. As drawn, prepared and sealed by either a registered land surveyor, engineer or architect.

10.3.3 Landscaping plan drawn to scale setting forth the nature, kind, shape, height of all materials to be used; sod and seed areas.

10.3.4 Soil erosion and sedimentation control plan.

10.3.5 Drainage, grading and site plan indicating topography and proposed plans for handling of on-site drainage, including, but not limited to, sump pump discharge, gutter drains, driveway drains, ditches, swales, sedimentation basins or berms; show physical features such as existing plant life, tree group, creeks, etc. Such plans must comply with Declarant's master engineering plans for elevations and drainage.

In addition, permission to build (in the form of a building permit or other certified means) must be obtained from all regulatory bodies subsequent to Committee approval but prior to any improvements.

10.4 Power of Disapproval. The Board or appropriate committee may refuse to grant approvals required under this Article when:

10.4.1 The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these restrictions or the requirements of the applicable Supplemental Declaration;

10.4.2 The design or color scheme of a proposed exterior repainting, modification or improvement is not in harmony with the general surroundings of the Lot, with adjacent buildings or structures, or with Community-Wide Standards, all as determined in the sole discretion of the Committee;

10.4.3 The proposed improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the Board of applicable committee; or

10.4.4 In the event that the Board or appropriate Committee has not acted upon the submission within 30 days by the issuance of a written approval, the submission will be deemed to have been denied.

10.5 Hold Harmless. Neither the Association, its directors, and committee created by the Board, nor any member thereof, will be liable for any damage, loss or prejudice suffered or claimed by any Owner or contractor who submits such plan on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; and (e) the development of any property within the Development. Any person submitting plans to either or both of such Committees or the Board will hold Declarant, the Association, its directors, the Committees, and any member thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

10.6 Inspection. The Board or their duly authorized agents, may inspect work being performed with their permission to assure compliance with this Declaration, the requirements of the applicable Supplemental Declaration and any applicable regulations of the Association.

10.7 Declarant Improvements. Notwithstanding any other provisions of this Declaration, neither the Association nor the Board will have any powers with respect to any construction, improvements or modifications undertaken by Declarant, its agents, contractors, suppliers, or subcontractors (or any assignee of Declarant if Declarant has approved the plans therefor).

10.8 Remedies for Failure to Obtain Approval. In the event any construction or modifications are made without first obtaining approval of the Board of appropriate committee as required herein, the Association and the applicable committee will have the powers of enforcement

granted to the Association generally for purposes of this Declaration and may require any modifications, construction, changes or improvements undertaken or installed without the approval of the applicable committee to be removed or renovated by whatever means the Association and/or applicable Committee deems appropriate, with all the costs thereof, including costs of collection and attorneys' fees to become a lien against the defaulting Owner's Lot in the manner described in Section 9.5 hereof.

10.9 Power to Grant Variances. The Board may allow reasonable variances or adjustments of the provisions of this Declaration where literal application, in the sole discretion of the Board, would result in unnecessary hardship, but any such variance or adjustment will be granted in conformity with the general intent and purposes of this Declaration, and no variance or adjustment will be granted which is materially detrimental or injurious to other Lots in the Development. All such variances will be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Development. No variance granted pursuant to the authority granted herein will constitute a waiver of any provision of this Declaration as applied to any other Person, Owner, Lot, or Residential Unit.

**ARTICLE XI
MORTGAGEE RIGHTS**

11.1 Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration will defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purpose at such sale and his successors and assigns will hold any and all land so purchased subject to this Declaration. Notwithstanding any other provision of this Declaration, neither the Owners nor the Association will have any right to make any amendment to this Declaration which materially impairs the rights of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

**ARTICLE XII
GENERAL PROVISIONS**

12.1 Duration. This Declaration and the covenants, restrictions, charges and liens set out herein will run with and bind the Development, and will inure to the benefit of and be enforceable by Declarant, and its legal representatives, successors, and assigns. Except as otherwise expressly set forth herein, this Declaration benefits only the real property described in this Declaration, and there is no intention to the benefit any persons other than those having an interest in such real property. The existence of easement rights or covenant rights in Persons not owning or having an interest in such real property will not confer on any such person, any right whatever to enforce the covenants, conditions and restrictions hereby created. The easements granted hereunder will be perpetual, subject to the provisions of this Declaration, with the exception of the easement rights provided herein, this Declaration will continue and remain in full force and effect at all times with respect to the Development and each part thereof (subject, however, to the right to amend the provisions hereof as provided for in Section 12.2 hereof and the right to include additional real property as provided

herein), until December 31, 2055. As of and after December 31, 2055, this Declaration and all provisions hereof will remain in full force and effect, subject to termination at any time by the written election of Owners of two-thirds (based on acreage) or more of the Real Estate and any Additional Land. Upon the recording of such termination election in the Office of the Recorder of Hendricks County, Indiana, this Declaration and all provisions hereof (excepting the grants of easement provided herein) will expire and terminate as of the date of such recording without any further act or instrument by any Person.

12.2 Amendment.

12.2.1 This Declaration may be amended unilaterally at any time and from time to time by Declarant (I) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which will be in conflict therewith; (ii) at Declarant's option, if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) at Declarant's option, if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration or (iv) at Declarant's option, if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment will not adversely affect the title to any Owner's Lot unless any such Lot Owner will consent thereto in writing. Further, so long as Declarant owns any property in the Development or any property capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment will not adversely affect in a material magnitude, the substantive rights of any then present Lot Owners hereunder, nor will it substantially affect marketability of title to any Lot without the consent of the affected Owner.

12.2.2 In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) a majority of the Owners and, so long as the Declarant owns any Lot, the consent of Declarant.

Amendments to this Declaration will become effective upon their recordation in the Office of the Recorder of Hendricks County, Indiana, unless a later effective date is specified therein.

12.3 **Indemnification.** The Association will indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director 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 or director. The officers and directors will not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance,

misconduct, or bad faith. Officers and directors will have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors are Members of the Association and thereby affected through the assessment process), and the Association will indemnify and forever hold each such officer and director 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 will not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association will, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

12.4 Easements for Utilities. There is hereby reserved to the Association and to any public or private utility which is an assignee of the Association, blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system or security system which the Association might decide to have installed to serve the Development. Notwithstanding the foregoing, such easement rights will be limited to the Common Area and to portions of the Lots on which no Residential Unit, as originally constructed, was situated. It will be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board will have the right to grant such easement.

12.5 General and Grammar. The singular, wherever used herein will be construed to mean the plural, when applicable, and the use of the masculine pronoun will include the neuter and feminine.

12.6 Severability. Whenever possible, each provision of this Declaration will be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will 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.

12.7 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

12.8 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration will be unlawful, void, or voidable for violation of the rule against perpetuities, then

such provisions will continue only until twenty-one (21) years after the death of the last survivor of the individuals who were Owners, who were living on the date of this Declaration, and who originally purchased Lots from the Declarant.

12.9 Mailing Address. Each Owner of a Lot in the Development will file the correct mailing address of such Owner with Declarant and will notify Declarant promptly in writing of any subsequent change of address. Declarant will maintain a file of such addresses and make the same available to the Association. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant or Association will be sufficient and proper notice to such Owner wherever notices are required in this Declaration. Once Declarant transfers control of the Association to the Owners, any filing of correct mailing address or subsequent change will be to the Association which will make same available to Declarant as Declarant's interests may require.

**ARTICLE XIII
ENFORCEMENT**

13.1 In General. Any party to whose benefit this Declaration inures, including Declarant, the Association and any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, but neither Declarant nor Association will be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.

Notwithstanding any other provision in this Declaration of Covenants, Conditions, Easements and Restrictions to the contrary, the Association acting through the Board may elect to enforce any provision of the Declaration, the Association's By-Laws, and the rules and regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for a violation for which abatement is sought or for which other action will be taken will pay all costs including attorneys fees actually incurred.

In addition thereto, any judgment for monetary damages arising from any such enforcement action, if not paid within 30 days from the due date, will constitute a lien on such Owner's Lot in favor of the Association. Said lien will have the same priority as a lien for assessment set forth in Section 9.5 of this Declaration and will be subject to foreclosure and such other provisions of Section 9.6 of this Declaration not inconsistent with this Section 13.1.

In addition to and not in limitation of the foregoing, if the Association or any director, officer, or Member thereof, or any Owner incurs attorneys' fees or costs in enforcing its rights under this Declaration as a result of any breach hereof, regardless of whether the matter results in the filing of a suit in any court, the breaching Person will pay all reasonable attorneys' fees and costs incurred by the Association or such director, officer, or Member thereof, or such Owner.

13.2 Government Enforcement. The Plan Commission of the municipality having jurisdiction, its successors and assigns, will have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Plan Commission of the municipality.

13.3 Delay or Failure to Enforce. 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 Declaration will 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 violating of this Declaration.

**ARTICLE XIV
PRIVATE AMENITIES AND SERVICES**

14.1 Private Amenities and Services. Elements comprising the Common Area will be owned and maintained by the Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or dissolution of the Association, the Association will convey the Common Area and any other applicable properties to a successor organization having similar purposes and powers as the Association (if any), and/or will use its best efforts to dedicate any or all applicable properties to the appropriate governmental agencies or utilities which normally hold and/or administer such properties. If and to the extent that such conveyance and/or dedication are not possible, all remaining properties will be disposed of as determined by the Circuit Court of Hendricks County, Indiana, consistent with the purposes set forth in this Declaration.

**ARTICLE XV
LIMITATION ON DECLARANT'S LIABILITY**

15.1 Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any partner, manager, member, director, officer, shareholder, agent, or representative in or of Declarant (or any partner, member, officer, director, shareholder, agent, or representative in or of any such assignee) will have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or its assignee), to the extent of its interest in the Real Estate and Additional Land (if any); and, in the event of a judgment, no execution or other action will be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgement debtor.

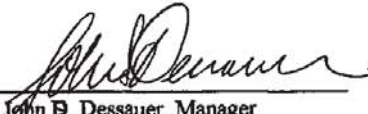
CHICAGO TITLE

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IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the 20th day of July, 2006.

Declarant:

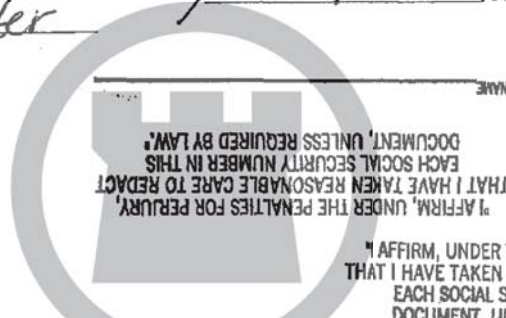
Cribs Danville, LLC

By: 
John D. Dessauer, Manager

STATE OF INDIANA)
)SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary in and for said County and State, personally appeared John S. Dessauer, Manager of Cribs Danville, LLC, and acknowledged the execution of the foregoing Woodberry Planned Development Declaration of Covenants, Conditions, Easements and Restrictions. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: 11/16/2011 
County of Residence: Porter, Notary Public



NAME _____
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.

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.

This instrument was prepared by:

NAME PETER L. ARZANO

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CHICAGO TITLE