

2
68.00
279
1.00 NOLIC

**DECLARATION OF EASEMENTS, COVENANTS
AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "Declaration") is made as of the 31st day of August, 2006, by PROMENADE COMMERCIAL, LLC, an Indiana limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of a certain tract of land located in Noblesville, Hamilton County, Indiana as more particularly described in Exhibit A attached hereto, and as shown on the Plot Plan attached hereto as Exhibit "B" (the "Plot Plan") ("Development Tract"); and

WHEREAS, Declarant desires that the Development Tract be developed, operated and maintained pursuant to a general plan of improvement to form an integrated mixed use development including, but not limited to, residential, assisted living, office, and/or retail uses (the "Master Development"); and

WHEREAS, the residential portion of the Master Development is planned to consist of approximately: (a) 110 multi-family units (quad homes) to be known as the Villas at the Promenade of Noblesville ("Villas"); (b) 121 lots to be known as Promenade Creek of Noblesville ("Creek"); and (c) 48 lots to be known as Promenade Woods of Noblesville ("Woods") as more particularly described in Exhibit A, and as shown on the Plot Plan (Villas, Creek and Woods collectively the "Residential Tract"); and

WHEREAS, the commercial portion of the Master Development is planned to consist of a shopping center with multiple out lots for retail, office use and other uses and purposes as more particularly described in Exhibit A, and as shown on the Plot Plan (collectively "Commercial Tract"); and

WHEREAS, Declarant desires that the Master Development be subject to certain easements and operating covenants, and such other conditions and restrictions hereinafter set forth;

WHEREAS, Declarant may lease and/or sell in one or more transactions, all or a portion of the Development Tract, to third parties; and

NOW THEREFORE, in consideration of the foregoing, Declarant hereby declares that the Development Tract is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, and encumbrances contained herein, all of which shall be deemed to be covenants running with the Development Tract.

2006-58033

1. Definitions.

964051_4

1

200600058034
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
09-29-2006 At 02:22 PM
EASEMENTS 68.00

**BEST POSSIBLE IMAGE
ALL PAGES**

(a) **"Building"** shall mean all improvements to and upon the Development Tract, excluding utility lines and installations and the Common Areas.

(b) **"Common Areas"** shall mean those portions of the Development Tract which are intended for the general use, enjoyment, convenience and benefit of Owners and all Occupants (hereinafter defined) and their Permittees (hereinafter defined), including, but not limited to:

(i) All non-public roadways to provide vehicular access and ingress and egress to and from the Master Development, including entrances and exits to and from the public roadways and streets and the roadways shown on Exhibit "B" attached hereto, and which may be modified from time to time;

(ii) All storm water drainage facilities, constructed by or for Declarant and serving more than one Parcel;

(iii) All landscaping for areas adjacent to roadways, public or private;

(iv) The round-a-bout shown on Exhibit "B" attached hereto; and

(v) Walking paths in the Commercial Tract.

The Common Areas are as shown on the Plot Plan, but shall exclude any portions of the Master Development which may, from time to time, be occupied by any duly dedicated public street or highway and shall include any of the foregoing as Parcels are developed;

(c) **"Occupant"** shall mean any person or legal entity who is entitled to the exclusive use and occupancy of any Building or portion thereof in the Master Development under rights contained in any lease or similar agreement.

(d) **"Owner"** shall generally mean Declarant or any other Person who may own a Parcel in fee simple within the Master Development, except in those cases where this Declaration specifically excludes, exempts, does not apply to or confers certain rights and responsibilities on Declarant.

(e) **"Permissible Building Areas"** as used herein shall mean those portions of the Commercial Tract which are approved by Declarant, such approval not to be unreasonably withheld, for construction of Buildings and which are consistent with the requirements in the PUD (as hereafter defined) and shown on Exhibit "B". Canopies may encroach from the Permissible Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

(f) **"Permittee"** shall mean any Occupant, and any officer, director, member, manager, employee, agent, contractor, customer, invitee, licensee, vendor, subtenant or concessionaire of any Occupant, Owner, or of Declarant.

(g) **"Person"** shall mean any individual, corporation, partnership, limited liability company or other similar entity.

(h) **"Parcel"** shall mean that portion of the Development Tract owned in fee simple by an Owner.

2. Term.

The term of this Declaration shall (unless sooner terminated under conditions contained herein) be for a period of ninety-nine (99) years, except to the extent that any easements survive pursuant to the terms of this Declaration.

3. Use. Buildings on the Development Tract shall be used only for residential, retail, assisted living and/or office purposes, subject to all applicable zoning ordinances, laws, codes, regulations and restrictions. The Development Tract is subject to certain commitments given by Declarant or its predecessor in connection with the Noblesville PUD Ordinance No. 6-1-06 adopted by the Common Council of the City of Noblesville on or about March 14, 2006 (the "PUD"). All Owners and Occupants shall own and use their Parcels and Buildings in strict accordance with the PUD.

4. Buildings.

(a) Design and Construction. Any Buildings now or hereafter located by an Owner or Occupant on the Commercial Tract shall be designed, constructed, and maintained so that the exterior elevation of all four sides shall have masonry or similar products, shall be architecturally and aesthetically compatible with the other Buildings within the Master Development and so that building wall footings shall not encroach from one Parcel onto another Parcel. The design and construction of any new Buildings or improvements to existing Buildings shall be of first-class quality and in compliance with all applicable codes, ordinances and laws, and the PUD. Prior to construction of any Buildings or any other improvements on the Commercial Tract, the Owner or Occupant thereof shall submit for Declarant's written approval the site plans, lighting plans, landscaping plans and architectural plans, which shall include curb cuts, parking spaces and driveways for such Buildings and improvements, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Utilities. Each Owner of a Parcel shall pay the costs of and be responsible for constructing, maintaining and providing the necessary facilities for water, gas, electrical, telephone, sewer services, both sanitary and storm water, and drainage on its Parcel. No Owner shall be responsible to another for any interruption in utility services or the inability to provide satisfactory service. Each Owner shall pay all regular charges for such utility services; provided, however, in the

event an Owner uses such facilities located on another Owner's Parcel to provide such services to its Parcel, such Owner shall pay for all charges based upon actual use of such facilities. Such Owner shall also arrange and pay for a separate meter, if available.

(c) Mechanics' Liens. In the event any mechanics' liens are filed against the Parcel of any Owner who did not contract for the work, the Owner for whom the work was performed, or otherwise causing the lien to be filed, hereby covenants to indemnify and hold harmless all other Owners and Occupants from such liens and further covenants to either pay the same and have it discharged of record, within thirty (30) days of filing, or to take such action to cause it to be bonded and discharged of record from the Parcel of such other Owner, and in all events agrees to have such lien discharged prior to the foreclosure of such lien.

5. Improvements.

(a) No Owner or Occupant shall construct, or cause or permit to be constructed, any Building, facilities or improvements on the Commercial Tract, except upon those areas designated by Declarant as Permissible Building Areas.

(b) An Owner or Occupant may expand its Building on its Parcel on the Commercial Tract, provided that:

(i) Such Owner or Occupant provides Declarant with copies of its plans and specifications at least thirty (30) days prior to construction and receives Declarant's written approval and all governmental approvals of same prior to construction;

(ii) The expansion is architecturally harmonious with the other Buildings in the Commercial Tract;

(iii) The expansion is in compliance with all applicable laws, statutes and ordinances, including all zoning requirements and the PUD;

(c) No Building on a Parcel (excluding Parcels 6 and 7 shown on Exhibit "B") shall exceed thirty feet or two (2) stories in height, measured from finished grade without written approval by Declarant. The heights of the Buildings on Parcels 6 and 7 will be subject to Declarant's approval

6. Easements.

(a) Nonexclusive Easements for Access, Ingress and Egress. Declarant hereby reserves for itself, and hereby grants to all Owners and Occupants, for their use, and for the use of their respective Permittees, in common with all others entitled to use the same, nonexclusive easements over those portions of the Common Areas of the Development Tract, including, without limitation, the roadway shown on Exhibit "B" and all other roadways hereafter constructed on the Development Tract, for vehicular and pedestrian access, ingress and egress, provided that an Owner may alter the

location of any roadways for the benefit of the other Parcel so long as access to a Parcel is not prevented by relocating such roadway. In no event shall these easements be construed so as to permit the parking of vehicles in areas which are not so designated for parking. No Owner shall install any curbs, improvements or other impediments to the free flow of automobiles and pedestrians across each Parcel in the Commercial Tract as an integrated Master Development, but may change configurations of parking, driveways, aisles and roadways on each Parcel or install speed bumps.

Notwithstanding the foregoing, Declarant and any Owner in the Commercial Tract each hereby reserve the right to close off the Common Areas of their respective Parcels for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of such Common Areas, as herein provided, such Owner shall give written notice to all other Owners in the Commercial Tract of its intention so to do, and shall coordinate such closing with such other Owners so that no unreasonable interference with the operation of the Master Development shall occur. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to nonexclusive use of the surface. Each Owner shall have the right to eject or cause the ejection from the Common Area of its respective Parcel of any person or persons not authorized, empowered or privileged to use the Common Area of such Parcel.

(b) Utilities.

(i) General Utility Lines. Declarant hereby reserves for itself, and hereby grants to each Owner of the Commercial Tract, for the use of their respective Parcels, and for the use of their respective Permittees, nonexclusive easements under and across the Common Areas of such Owner's respective Parcel for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of utility lines for fire protection, sanitary sewers, storm drains, water and gas mains, electrical power lines, cable television, telephone lines and other utility lines for the sole purpose of providing such utility service to the Parcel of each Owner. All of such sewers, drains, mains and lines shall be underground and shall not be located so as to interfere with the use and enjoyment of any other Owner's Parcel of the Commercial Tract.

(ii) Common Utility Lines. Declarant hereby reserves for itself, and hereby grants each other Owner of the Commercial Tract, for the use of their respective Parcels, and for the use of their respective Permittees, nonexclusive easements under and across the Common Areas of such Owner's respective Parcel for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of fire protection, sanitary sewers, storm drains, water and gas mains, electrical power lines, cable television, telephone lines and other utility lines for the service of Common Areas and for use in common with the other Owners. All of such sewers, drains, mains and lines shall be underground and shall not be located so as to interfere with the use and enjoyment of the other Owner's Parcel.

(iii) Future Utility Lines. Declarant hereby reserves for itself, for the use of its Parcels and for the use of its Permittees, nonexclusive easements under and across the Common Areas of each Owner's respective Parcel for the purposes of installing therein in the future, other pipes, lines and mains, not part of the common utility lines as originally constructed, to provide gas, water, fire loops, and hydrants therefor, electric power, other forms of energy, cable television, signal, telephone, sanitary sewer and storm sewer services, or any of them, to or from any present or future facilities on the Master Development. All such pipes, sewers, drains, mains and lines shall be underground and shall not be located so as to interfere with the use and enjoyment of any other Owner's Parcel.

(iv) Location of Easements. It is contemplated that the construction of utilities will be done in phases, but the location of all easements of the character described in this Section 6(b) shall be subject to the prior written approval of the Owner on whose Parcel the easement is to be located, such approval not to be unreasonably withheld and shall not be located underneath any Building or proposed Building. Any Owner which exercises such easement shall, at said Owner's sole cost and expense, restore the other Owner's Parcel if affected by the construction or maintenance of such utility facilities to substantially the same condition as such Parcel was before the commencement of the construction, including, without limitation, the restoration of pavement.

(c) Construction Easements. Declarant hereby reserves for itself nonexclusive easements for the temporary use of portions of the Common Area of each Parcel from time to time for the purpose of the development, construction and reconstruction, pursuant to the provisions of Sections 3, 4 and 5 of this Declaration. Declarant shall exercise such easements in a manner which shall not result in damage or injury to the Buildings or other improvements of any other Owner, and shall not materially interfere with the business operation conducted in the Master Development.

The easements provided in this Section 6(c) shall terminate as to the Common Areas on the Parcel of each Owner upon the termination of this Declaration. The easements granted in this Section 6(c) shall only be exercised after reasonable prior notice by Declarant to the appropriate Owner(s), and the Declarant shall use reasonable efforts to exercise (or cause the exercise of) such rights in a manner designed to minimize interference with the Parcel of the Owner affected thereby and such Owner's business use thereof.

(d) Dominant and Servient Estates. Each easement granted pursuant to the provisions hereof is expressly for the benefit of the Parcel of the grantee Owner, and the Parcel so benefitted shall be the dominant estate and the Parcel upon which such easement is located shall be the servient estate, but where only a portion thereof is bound and burdened, or benefitted by a particular easement, only that portion so bound and burdened, or benefitted, as the case may be, shall be deemed to be the servient or dominant tenement, as the case may be. Any easement granted pursuant to the provisions of this Section 6 may be abandoned or terminated by execution of an agreement so abandoning or terminating the same, by the Owners of the dominant and servient estates.

(e) Operating Easements. Declarant reserves for itself, easements in, upon, over and through the Common Areas of all Parcels for the purpose of managing, operating, maintaining, reconstructing and repairing Common Areas to the applicable provisions of this Declaration. Any such entry shall be done by prior notice to the applicable Owner (to a representative at the Parcel) except in emergencies, when notice shall be given as soon as practicable and shall be performed to minimize any substantial interference with the operation of the business or home on the Parcel.

The easements provided in this Section 6(e) shall terminate as to the Common Areas upon the termination of this Declaration. Declarant shall use reasonable efforts to exercise (or cause the exercise of) such rights in a manner designed to minimize interference with the Parcel of the other Owners and the other Owners use thereon.

(f) Additional Rights. Declarant shall have the right to promulgate rules and regulations concerning the use by the Owners and their Permittees of the utilities and Common Areas.

(g) Survival of Easements. Except as otherwise expressly provided herein, the easements granted under Section 6(a) and Section 6(b) shall be perpetual and survive the termination of this Declaration and shall inure to the benefit of and be binding on the Owners of the Parcels where such roadways and utility lines are located, their respective successors and assigns, and all easements shall run with the land constituting the Development Tract.

(h) Dedication. Declarant shall have the right to (i) assign or dedicate to any appropriate public utility company (the "Utility Company"), municipality or other political subdivision or governmental body or agency (collectively referred to as the "Municipality"), in whole or in part, any utility easement or access easement, and any rights reserved to Declarant which are reasonably necessary to enable the Utility Company or the Municipality to provide adequate utility service or surface drainage to the Parcels or to provide adequate access, ingress and egress by vehicular and pedestrian traffic to the Parcels over and across the roadways, (ii) enter into any agreement with the Utility Company or the Municipality which Declarant, in its sole discretion, determines to be necessary or appropriate to accomplish the purposes of this subsection and which declares or defines the rights and obligations of Declarant, the Owners and the Utility Company or Municipality in connection with (1) the service provided by the Utility Company or the Municipality, (2) the use and maintenance of the utilities, the utility equipment, and the utility easements, (3) the use and maintenance of the surface drainage system and the surface drainage easements, and (4) the use and maintenance of the Common Areas, the traffic control devices and the access easements as applicable.

7. Use of Common Areas in Commercial Tract.

(a) Lighting of Common Areas. All lighting standards and fixtures erected and installed upon the Common Areas of each Owner's Parcel shall be provided by a manufacturer acceptable to the local municipality and shall be connected to the meter of such Owner and the power used thereby

charged to such Party. Each Owner in the Commercial Tract shall, at its own expense, keep all Common Areas on its respective Parcel lighted until 11 p.m. each night or as otherwise agreed upon by all Owners in the Commercial Tract and all lights on the rear of each Building shall remain lighted from dusk to dawn, unless prohibited by local laws, rules, regulations or ordinances.

(b) Alterations to Common Area Arrangement. The location of and area allocated to streets, alleys and drives within the Common Areas in the Commercial Tract may be revised, restricted or relocated by any Owner without the consent of the Declarant and the other Owners, subject to the terms of Section 6(a), and each Owner shall have the right to restripe and redesign the parking fields on their respective Parcels.

(c) Parking and Loading Areas. All parking spaces, driveways, landscaping, exterior lighting, aisleways and loading areas on each Parcel in the Commercial Tract shall meet all requirements set forth under applicable zoning and building codes, laws and ordinances, and in conformance with the requirements of the PUD, and shall be maintained by each Owner.

(d) Expenses. Each Owner shall pay to Declarant its share of the maintenance expenses incurred by Declarant under this Section 7(d) as provided herein:

(i) Common Area Expenses. Except for roadway expenses addressed specifically in Section 7(d)(ii) below, each Owner of the Commercial Tracts shall pay its share of the maintenance expenses incurred by Declarant under Section 7(d), based on the proportion of the area in gross square feet of the Owner's Parcel to the area in gross square feet on the Commercial Tract and no Owner shall be granted any waiver or reduction of the amount so owed to Declarant so as to cause an increase in the amounts owed by the other Owners. Each Owner of the Commercial Tract shall be billed for its annual prorata share of said expenses in advance during January or quarterly, during January, April, July and October, at Declarant's election, of each year, based upon estimates prepared by and as reasonably determined by Declarant. At the time of the next annual billing by Declarant, if actual expenses for the immediately preceding year shall differ from Declarant's estimates, the billing statement shall provide either a credit or an additional amount due. All such expenses shall be paid to Declarant within thirty (30) days after issuance of the annualized billing statement. If payment is not timely made by an Owner, Declarant may file with the appropriate governmental office a notice of intention to hold a lien for such share, and foreclose such lien in the same manner as mechanic's liens are foreclosed, together with interest at the Default Rate (as defined in Section 15) and attorney fees. If an Owner, or its successor, fails to construct any Building on its Parcel within two (2) years from taking title to the Parcel from Declarant, the then Owner of the Parcel shall be liable to Declarant for its share of cost and expenses under this Declaration based upon Declarant's sole determination of the maximum square feet buildable on the Parcel.

(ii) Common Area Expenses for Roadway Maintenance. Each Owner of the Residential Tract and Commercial Tract shall pay its share of the maintenance and operation costs

associated with the Master Development's roadways and right-of-ways, and the walking paths on the Residential Tract if not properly maintained in good condition and repair by the developer or homeowners association thereof, if Declarant elects to maintain such paths but Declarant shall have no obligation to maintain such paths [including signage, lighting, salting and snow removal (including public rights-of-way if performed by Declarant), and landscaping of associated greenways] according to Declarant's reasonable allocation of such costs as specified herein. With respect to the Residential Tract, Owners at the Woods shall pay annually 2.4% of the annual costs; Owners at the Villas shall pay annually 14% of the annual costs; and Owners at the Creek shall pay annually 18% of the annual costs. Declarant shall have the right to pursue collection from each developer or home builder of each of Woods, Villas and Creek and any homeowners association established for such residential developments in addition to each lot owner being responsible for its pro rata share based upon the total number of lots platted in each development, but the cost to each lot owner shall not exceed Fifty Dollars (\$50.00) per year. Owners of the Commercial Tract shall pay their respective share of roadway maintenance costs based on their proportionate share of responsibility for Common Area Costs (as determined in subpart (i) above) which shares shall apply to Declarant's incurred annual roadway/right-of-ways maintenance and operation costs, less any amounts paid by Owners of the Residential Tract. Maintenance expenses shall be billed (including any adjustments) at the same time and in the same manner as other common area expenses as specified in subpart (i) above. If payment is not timely made by an Owner, Declarant may exercise lien or foreclosure rights as provided in Section 7(d)(i) above.

For the purpose of this Section 7(d), common area expenses shall include all costs and expenses incurred in operating, managing, insuring and maintaining the Common Areas on each Parcel by Declarant exclusive of any Building other than the following costs: debt service payments, leasing commissions and costs of constructing or improving Buildings in the Master Development to be leased to other tenants. Such maintenance expenses shall include but not be limited to management fees of not more than fifteen percent (15%) of all maintenance expenses, a capital reserve fund of not more than ten percent (10%) of all maintenance expenses, the cost of irrigating, equipping, lighting, repairing, replacing and maintaining such areas and facilities at the Master Development, and further including, without limitation, painting, lighting, paving, repaving, sanitary control, removal of snow and ice, trash, rubbish, garbage and other refuse, repair and replacement of structures in such areas, paving, landscaping, grass mowing, depreciation on or rentals of machinery and equipment used in such maintenance, the cost of personnel to direct parking, to act as security guards, and to police such areas, the cost and expense to comply with all laws, rules, regulations and ordinances including, but not limited to, the 2006 Storm Cleanliness Ordinance, the cost and expense incurred in common lighting of the Master Development, and the cost and expense of structures or improvements required to comply with applicable laws. Expenses incurred by Declarant for depreciable equipment shall be amortized over the expected life of the equipment consistent with generally accepted accounting practices. All insurance proceeds received on account of loss of any items, the replacement or repair of which is included in such maintenance costs, shall be credited against such costs, thereby reducing the same for this purpose.

(e) By Agent. A third party may be appointed as an agent of the Declarant to manage and maintain such areas in the manner as above outlined and receive all or any part of the management fee included in the computation of such maintenance expense.

8. Maintenance of Parcels on the Commercial Tract.

(a) Each Owner shall maintain, repair and replace all Buildings and other improvements located on its respective Parcel on the Commercial Tract, so as to keep same at all times in a safe, sightly, good and functional condition to standards of comparable community developments in Noblesville, Indiana and in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover as well as with the provisions of this Agreement. Each Owner shall maintain its landscaping in a thriving condition, shall promptly remove and replace all dead trees, shrubs and ground covering, and shall not permit any landscaping along State Road 32 to interfere with the visibility of all Buildings on the Commercial Tract, as reasonably determined by Declarant. but Declarant shall have the right, but not the obligation, to maintain and replace all landscaping on Parcels which abut State Road 32 and each Parcel Owner shall reimburse Declarant for the allocable share of the cost as reasonably determined by Declarant within thirty (30) days of invoice.

(b) Except as specifically provided otherwise in Section 7 above, each Owner shall be responsible for keeping its own Parcel on the Commercial Tract clean and free from refuse and rubbish and agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the main parking areas, and to arrange for regular removal of such trash or garbage.

(c) Each Owner shall re-stripe and replace markings on, the surface of the driveways on its Parcel on the Commercial Tract from time to time as and when necessary. Any striping and other markings shall be consistent with the Plot Plan and the materials shall be consistent with that used in the Master Development.

(d) Each Owner shall cause the roadways, parking areas and all Buildings and improvements located on its Parcel on the Commercial Tract to comply with all applicable requirements of law and governmental regulations applicable thereto, provided however, that an Owner may contest any such law or regulations so long as such contest would not create any material danger of a loss of title to, or impairment in any way of the use of, all or any portion of such areas for their intended purposes.

(e) No Owner shall alter the grade elevations on any portion of its Parcel on the Commercial Tract if such alteration would increase the flow of surface water onto another Parcel, affect ingress and egress, or otherwise adversely affect another Parcel. Prior to commencing any construction activities within the Commercial Tract, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverage set forth below:

10

964051_4

- (i) Worker's Compensation – statutory limits
- (ii) Employer's Liability - \$500,000.00
- (iii) Commercial General and Commercial Auto Liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, including:
 - (A) Products/Completed Operations Coverage on an occurrence basis;
 - (B) "XCU" Hazard Endorsement, if applicable;
 - (C) Contractual Liability Endorsement;
- (iv) Umbrella liability in the amount of Two Million Dollars (\$2,000,000.00);
- (v) Contractor's Protective Liability Insurance covering the contractor and owner(s) in the same amounts as set forth in (iii) above; and
- (vi) Effective upon the commencement of construction of improvements, the constructing Owner will carry or cause to be carried, property insurance on a Standard Comprehensive Replacement Cost Form with a face amount equal to one hundred percent (100%) of the replacement value (exclusive of the cost of excavation, foundations, and footings) of the Buildings and improvements, with a standard co-insurance endorsement of not more than ninety percent (90%).

If the construction activity involves the use of another Owner's Parcel, then the Owner of such Parcel shall be an additional insured and such insurance shall provide that the same shall not be cancelled without at least thirty (30) days prior written notice to the additional insureds. If such insurance is cancelled or expires, then the constructing Owner shall immediately stop all work on or use of another Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained.

(f) No Owner (including Declarant) shall (i) create, cause, permit or suffer any nuisance to exist on its Parcel (s); (ii) cause, permit or suffer noxious or objectionable dust, gases, odors or noises to emanate from its Parcel(s); (iii) cause, permit or suffer any unsightly condition to exist on its Parcel(s) or any offensive or unsightly objects and materials to remain on its Parcel(s) (including without limitation, inoperative vehicles); (iv) cause, permit or suffer any temporary structure on its Parcel(s) unless Declarant first approves it; (v) cause, permit or suffer the storage of any material or object of any nature outside of a Building (unless Declarant first approves the storage in writing); (vi) cause, permit or suffer the storage of any explosive or combustible substance on its Parcel(s)

(unless Declarant first approves the storage in writing); (vii) use (or cause, permit or suffer the use of) its Parcel(s) for a purpose which materially interferes with the lawful and intended use of another Parcel; or (viii) use (or cause, permit or suffer the use of) its Parcel(s) for a purpose or in a manner which cause the volume of vehicular traffic on the Common Area driveways and roadways to exceed the aggregate number of usable parking space on the Owner's Parcel(s); (ix) cause, permit or suffer the Permittees of and visitors to its Parcel(s) to park any vehicle on the driveways or roadways; or (x) attempt to dedicate any appurtenant easement created by Section 6 to a Utility Company or Municipality. Notwithstanding the covenants and conditions set forth in this section, neither the activities related to the construction, erection and installation of Buildings, surface improvements or other improvements on a Parcel, nor the following consequences of such construction activities shall be deemed to be a violation of any of the covenants, conditions, terms and provisions set forth in this section (unless the activities materially and unreasonably interfere with the lawful and intended use of another Parcel): (i) dust, gases, odors, noises and vibrations which emanate from a construction site; (ii) storage of construction materials or the presence of other customary consequences of construction; provided that such construction shall be prosecuted with reasonable dispatch.

No Owner shall seek to change a zoning classification for any Parcel from its current classification or secure a zoning variance or special use exception (collectively referred to herein as the "Zoning Change(s)") for any Parcel (unless Declarant approved in writing the proposed Zoning Change). If Declarant seeks a Zoning Change for a Parcel which Declarant owns or if Declarant approves in writing the approval by an Owner to seek a Zoning Change for a Parcel which is owned by that Owner, then (unless the Zoning Change involves a material change in the use of the Parcel), each Owner (i) shall be deemed to have consented to the Zoning Change and (ii) shall execute any and all documents (which Declarant, in its sole discretion, determines to be necessary or appropriate in connection with the Zoning Change) stating, representing, certifying or acknowledging that the Owner consents to the Zoning Change.

(g) Prohibited Uses. The following operations and uses, together with all uses prohibited by law, shall not be permitted on a Parcel(s) subject to this Declaration:

- (1) Trailer Courts.
- (2) Labor Camps.
- (3) Junk Yards.
- (4) Storage of building or construction materials outside of a structure unless approved by the Declarant.
- (5) Distillation of bones.
- (6) Dumping, disposal, incineration or reduction of garbage, sewage, dead animals or refuse.

- (7) Fat rendering.
- (8) Stockyard or slaughter of animals.
- (9) Smelting of iron, tin, zinc or ores.
- (10) Refining of petroleum or of its products.
- (11) Cemeteries or mausoleums.
- (12) Jail, penal, detention or correction farms.
- (13) Gasoline service stations.
- (14) Third party advertising billboards.
- (15) Temporary or portable sawmill.
- (16) Community Fair.
- (17) Non-commercial club or lodge.
- (18) Sewage or treatment plant.
- (19) Boarding and breeding kennels.
- (20) Temporary religious meetings.
- (21) Funeral home.
- (22) Sanitorium, convalescent or retirement home.
- (23) Any use not harmonizing with the development of Promenade as determined by the Declarant.

This list is not intended to be all inclusive but to act as a standard of reference for unacceptable uses. Declarant reserves the right to deny any other use as it deems necessary to maintain the Master Development standards. Such rejection will be in writing and will list all reasons for denial

9. Signs for the Commercial Tract.

(a) Declarant shall install and maintain or cause to be installed and maintained the sign shown in the area on Exhibit "B" attached hereto, within the Master Development with the right (but not the obligation) to include the name of the Master Development thereon. Declarant shall be permitted to replace such sign or erect a new sign within the Master Development with the name of the Master Development thereon. Throughout the term of this Declaration, Declarant shall maintain the sign in good condition and repair ordinary wear and tear excepted. The costs of maintenance of the sign shall be reimbursed to Declarant by each Owner in the Commercial Tract, on a prorata share based upon the same percentage described in Section 7(d).

(b) Building Exterior. To the extent permitted by applicable governmental laws and regulations but subject to the approval of Declarant, each Owner of the Commercial Tract may install standard exterior building signs on its Building, provided such signs are substantially the same as that found on a prototypical neighborhood retail/office center in the Noblesville area. Each Owner shall maintain all such signs in good condition and repair throughout the term of this Declaration.

10. Indemnification/Insurance for the Commercial Tract.

(a) Indemnification. Each Owner of the Commercial Tract shall indemnify and save all of the other Owners of the Commercial Tract harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Parcel, except if caused by the willful act or negligence of another Owner.

(b) Insurance.

(i) Each Owner of the Commercial Tract shall procure and maintain in full force and effect throughout the term of this Declaration commercial general liability insurance, including personal injury and contractual liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Parcel, in an amount of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person; One Million Dollars (\$1,000,000.00) for injury to or death of more than one (1) person in the same accident or occurrence; and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage arising out of any one accident or occurrence. Any such Owner may carry policies with lesser stated limits, provided such Owner carries an "umbrella policy" in an amount equal to at least twice the approved limits required hereunder. At the end of every fifth year during the term hereof, the stated limits under such policies required hereunder may be adjusted to reflect reasonable stated limits under such similar policies of insurance required to be carried by owners and tenants of similar property use, size and market value located in the metropolitan Indianapolis area, as reasonably determined by Declarant. Each such Owner shall annually provide the Declarant with certificates of such insurance to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by such Owner which may cover other property in addition to the property covered by this Declaration. All insurance shall provide that the same may not be cancelled or altered without 30 days prior written notice to Declarant so long as Declarant owns any part of the Master Development.

(ii) At all times during the term of this Declaration, each Owner of the Commercial Tract shall keep improvements on its Parcel insured against loss or damage by fire and other perils and events as may be insured against under a special perils property policy, with such insurance to be not less than ninety percent (90%) of the full replacement cost of the insured improvements.

(iii) Each Owner of the Commercial Tract hereby releases and waives any claims against each of the other Owners from any liability for any loss or damage to any or all property, including any resulting loss of rents or profits of each, and of any Occupant claiming its right of occupancy by or through it, located upon the Master Development, which loss or damage is of the type covered by the insurance required to be maintained by it under this Section 10 (b) (ii), regardless of any negligence on the part of the released person which may have contributed to or caused such loss or damage, and, on behalf of its insurance carrier, waives any right of subrogation that may arise therefrom. If the insurance policy does not allow a waiver of the rights of subrogation of the insurer, each such Owner covenants that it will use reasonable efforts to obtain for the benefit of each such person a waiver of any right of subrogation which the insurer of such person may acquire against any such person by virtue of the payment of any such loss covered by such insurance.

(iv) If any Owner of the Commercial Tract is by law, statute or governmental regulation or for any other reason (including insurance company requirements) unable to obtain or otherwise fails to obtain a waiver of the right of subrogation for the benefit of each other Owner, then, during any period of time when such waiver is unobtainable, or has not been obtained for any reason, or during any period of time when the giving of such waiver would invalidate the insurance coverage of the waiving party, said Owner shall be deemed not to have waived any right of subrogation of its insurance carrier against the other Owner, and during the same period of time the other Owner shall be deemed not to have waived the right of subrogation of its insurance carrier against such Owner who has been unable, or failed for any reason, to obtain such waiver from any claims their insurance carriers may assert which otherwise should have been waived pursuant to this Section 10(b) (iv).

11. Eminent Domain for the Commercial Tract.

(a) Owner's Right to Award. Nothing herein shall be construed to give an Owner any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of any Parcel, the award attributable to the land and improvements of such portion of the Parcel shall be payable only to the Owner thereof, and no claim thereof shall be made by the Owners of any other portion of the areas used by other Owners; provided, however, said other Owner of the Commercial Tract shall have the right to seek an award for the loss of their easement rights in the Commercial Tract to the extent such award does not impair any award to the Owner of the Parcel where the easements are located.

(b) Restoration of Parcels. The Owner of each portion of the Parcel in the Commercial Tract so condemned shall promptly repair and restore the remaining portion of the Parcel so owned as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer.

(c) Taking of Buildings. In the event that all or any part more than twenty percent (20%) of the total floor area of an Owner's Building or the parking on its respective Parcel in the Commercial Tract shall, during the term of this Declaration, be taken or damaged by eminent domain, so that it is not feasible to restore the same and use the Building for the permitted use which was operated in the Building immediately prior to such condemnation, such Owner may elect to be released from its obligations to rebuild its Building hereunder as of the date of such taking by providing notice to all other Owners in the Commercial Tract within sixty (60) days of the filing of suit for the taking or the execution of a deed in lieu thereof, and in such event, such Owner shall not be obligated to restore such Building; however, such Party shall demolish the remainder of the Building and restore and continuously maintain its Parcel in a neat and orderly condition, free of debris.

12. Release from Liability.

Any Person acquiring fee or leasehold title to the Development Tract, or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired by such Person. In addition, such Person shall be bound by this Declaration only during the period such Person is the fee or leasehold owner of such Parcel or portion of the Parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although Persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels running with the land.

13. Assignment.

(a) Any Owner which assigns, transfers or conveys its right, title or interest in its Parcel shall provide that the transferee shall recognize the obligations of such Owner under this Declaration.

(b) Declarant shall have the right to assign its rights and responsibilities as "Declarant" under this Declaration to the Owner of any Parcel who shall then become the "Declarant" under this Declaration.

14. Damage or Destruction.

(a) If, during the twenty (20) years of the term hereof (the "Restoration Period"), any Buildings or improvements on the Commercial Tract are damaged or destroyed by fire or other casualty, the Owner of such Parcel shall promptly proceed to repair and restore the same to the condition existing immediately prior to the occurrence of such casualty unless waived by Declarant. If, following the Restoration Period, any Buildings or improvements on the Commercial Tract are damaged or destroyed and such Owner elects not to rebuild, then Owner will restore its Parcel as soon as reasonably practical to a neat and orderly condition free of debris, retain common areas used by other Owners and either landscape or pave and stripe its Parcel. If an Owner fails to comply with the terms of this Section 14, any Owner in the Commercial Tract shall have the right in accordance with and in addition to the provisions of Section 15 to raze any improvements so damaged or destroyed.

15. Default.

(a) Unless otherwise provided in this Declaration, no Owner or Occupant hereto shall be deemed to be in default under this Agreement until such Owner or Occupant shall have been given written notice describing the nature of the breach and within fifteen (15) days after the receipt of such notice, or such longer period of time as otherwise may be provided in this Declaration, shall have failed to cure such breach unless such a cure reasonably requires a longer period of time than fifteen (15) days, in which case such Owner or Occupant shall have commenced such cure within the fifteen (15) day period, is diligently proceeding to complete such cure and completes the cure within ninety (90) days.

(b) In the event an Owner shall institute any action or proceeding against any other Owner relating to a breach of this Declaration, the unsuccessful party in any action shall pay to the prevailing party reasonable attorney's fees, which shall be deemed to have accrued on the date such action was filed.

(c) In the event any Owner in the Commercial Tract shall be in default under this Declaration due to failure to cure nonperformance of any provision, covenant or condition of this Declaration as provided in Section 15(a) above, then in addition to any other remedy at law or in equity, the Declarant shall have the right, but not the obligation, to proceed ten (10) business days after expiration of the fifteen (15) day period provided in Section 15(a) above [or such additional time in the case of a default which by its nature cannot be cured within such fifteen (15) day period, so long as Declarant shall have taken action during said period and shall thereafter diligently prosecute the curing thereof] to take such action as reasonably necessary to cure such default in the name of and for the account of the defaulting Owner, and shall have access to the defaulting Owner's Parcel to accomplish the same.

(d) In the event an Owner delivers notice to all other Owners of its mortgagee and its address to which notices are to be sent, such mortgagee shall have the right to cure any default of such Owner during the period of time that the Owner has under this Section 15.

At the election of the non-defaulting Owner in the Commercial Tract: (i) the defaulting Owner in the Commercial Tract shall either reimburse the non-defaulting Owner for actual costs and expenses incurred in curing the default, together with any penalties and interest at the annual rate of five percent (5%) over prime rate as published in the Wall Street Journal, or if two rates are published or no prime rate is published, then the prime rate shall be that of a financial institution selected by the non-defaulting Owner (the "Default Rate"), or (ii) the non-defaulting Owner may withhold said amount from monies, if any, otherwise due and payable to the defaulting Owner under the terms of this Declaration, but no funds may be withheld from funds due Declarant. If a curing Owner believes in good faith that a default has created an emergency endangering life and property, then no notice shall be required to permit the curing Owner to take action reasonably necessary to cure said default, provided the curing Owner gives the defaulting Party such notice as is reasonable under the circumstances and, in any event, immediately upon commencing curative action.

16. Notices.

Each notice, demand, request, consent, approval or other communication (all of the foregoing herein referred to as a "notice") that an Owner is required to give to any other Owner shall be in writing and sent by hand-delivery, overnight delivery service, as long as delivery is made only upon a receipt signed by the addressee, or by certified mail, return receipt requested, postage prepaid. In the case of Declarant, notices shall be addressed to Declarant at 9011 North Meridian Street, Suite 202, Indianapolis, Indiana 46260.

Each Owner shall provide Declarant with its notice address at the time it purchases its Parcel, and have the right to designate a different address by notice similarly given. A copy of each notice sent hereunder, shall also be sent to Declarant. Unless specifically stated to the contrary elsewhere in this Agreement, any notice shall be deemed to have been given, made or communicated, as the case may be, on the date the same is received by the addressee or refused by such addressee. Any Owner shall have the right to designate its mortgagee to be entitled to receive a courtesy copy of notice under this Declaration by providing notice to all Owners of the mortgagee and its notice address. Such mortgagee shall not be entitled to receive notices under this Declaration if it releases its lien against the Owner's Parcel. Each Owner shall notify all other Owners when a mortgagee's lien has been so released.

17. Rights of Successors.

The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the Development Tract. This Declaration shall bind and inure to the benefit of each of the Owners, their respective heirs, representatives, lessees, successors and assigns, except as otherwise noted herein.

18. Singular and Plural.

The singular number includes the plural and the masculine gender includes the feminine and neuter gender, and vice versa.

19. Headings.

The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

20. No Partnership, Joint Venture or Principal-Agent Relationship.

Nothing contained in this Declaration shall be construed to make any of the Owner's principal and agent, or partners, or joint venturers, or to render any Owner liable for the debts or obligations of another Owner, except as provided in this Declaration, and no provisions of this Declaration are intended to create or constitute any person a third-party beneficiary hereof.

21. Severability.

If any provisions of this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

22. Governing Law.

This Declaration shall be construed and governed in accordance with the laws of the State of Indiana.

23. Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any part of the Development Tract to the general public, or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. Furthermore, except for any utility or roadway dedications, no Owner may dedicate any part of its Parcel for public purposes without the consent of the other Owners.

24. Non-Waiver.

The failure of any Owner to insist upon strict performance of any of the terms, covenants or conditions of this Declaration shall not be deemed a waiver of any rights or remedies which that Owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

25. Estoppel Certificates.

Each Owner of the Commercial Tract, and the initial residential builder of the Residential Tract shall, from time to time [but not more frequently than twice in any twelve (12) month period], upon not less than thirty (30) days' notice from any other Owner, execute and deliver to such other Owner, or such Owner's mortgagee or any other person or entity having or acquiring an interest in such Owner's Parcel, a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, stating the modifications; and stating whether or not, to the best of its knowledge, the other Owner is in default in any respect under this Declaration and, if in default, specifying such default. This provision shall not apply to any residential home owners.

26. Force Majeure.

The time within which any Owner hereto shall be required to perform any act under this Declaration, other than the payment of money, shall be extended by a period of time equal to the number of days during which the performance of such act is unavoidably prevented or delayed, or hindered by acts of God, meteorological elements, labor strikes and disputes (but only in the event such strikes or disputes are not attributable to the acts or omissions of such Owner, its agents, representatives, contractors, subcontractors or employees), acts of war, or war defense conditions, acts of public enemies, orders of government, governmental requirements and restrictions, or other causes similar to the foregoing and not within the reasonable control of such Owner ("Force Majeure").

27. Hazardous Material.

As used in this Agreement, "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Acts ("RCRA"), as amended, 42 U.S.C. Section 6901 et seq. and Indiana Environmental Protection Act, as amended, I.C. 13-7-1-1 to 20-34.

In no way limiting an Owner's duties and obligations as set forth in this Declaration, if the presence of any Hazardous Material(s) on the Development Tract caused or permitted by any Owner or its agents, employees, contractors, tenants or subtenants (collectively "Agents"), results in contamination of any portion of the Development Tract, any land other than the Development Tract, the atmosphere, or any water or waterway (including groundwater, but only if caused by an Owner or its Agents), or if contamination of any one or all of the Parcels or of the Master Development by any Hazardous Material(s) otherwise occurs for which any Owner is otherwise legally liable for damages resulting therefrom (the "Polluting Owner"), said Polluting Owner shall indemnify, save harmless and defend all of the non-polluting Owners, their Agents, partners, officers and directors from any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind of nature (including, without limitation, diminution in value of the non-polluting Owners' Parcels or the damages for the loss or restriction on use of the rentable or usable space or of any amenity of the non polluting Owners' Parcels or the Master Development, damages arising from any adverse impact on marketing space in the Master Development, and sums paid in settlement of claims and for attorneys' fees, consultant fees and expert fees which may arise during or after the term of the Declaration as a result of such contamination). This includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about a Parcel or the Master Development that was caused or permitted (excluding ground water) by a Polluting Owner or its Agents to be brought upon any Parcel. Without limiting the foregoing, if the presence of any Hazardous Material(s) on or about any Parcel or the Master Development caused or permitted (excluding ground water) by any Party hereto results in any contamination of any Parcel the Polluting Owner causing or permitting such contamination shall, at its sole expense, promptly take all actions and expense as are reasonably necessary, including all actions required by any governmental authority having appropriate jurisdiction, to return the Parcel(s) to the condition existing prior to the introduction of any such Hazardous Material(s) to the Parcel(s); provided, however, that Declarant's approval of such actions shall first be obtained in writing. The agreements, obligations and conditions set forth in this Section 27 shall survive termination of or expiration of the term of this Declaration. Nothing contained herein shall

prohibit the storage and sale at retail of gasoline and petroleum products to the public for motor vehicles and trucks.

28. Amendment.

This Declaration may be amended by Declarant by recording properly executed written instrument at any time while Declarant owns any part of the Development Tract (including any entity affiliated with Declarant), and thereafter by recording a written instrument properly executed by the Owners of at least seventy-five percent (75%) of the gross square footage of the Buildings on the Commercial Tract, the effect of which shall be to bind all Owners and Occupants of the Development Tract, provided no amount of the percentage of liability attributable to the Residential Tracts shall be permitted to be increased without the approval of Declarant and of 51% of the applicable homeowners in each such development, namely the Woods, Creeks and Villas.

EXHIBIT "A"
Legal Description

(Development Tract)

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Southwest corner of the Southwest one-quarter of said Section 34; thence North 00°24'21" East 99.23 feet along the West line of said Southwest one-quarter; thence Northeasterly 16.50 feet along a 122,676.67 foot radius curve to the left, the long chord of which bears North 89°38'27" East 16.50 feet; thence South 47°05'31" East 72.93 feet; thence Northeasterly 429.22 feet along a 122,626.67 foot radius curve to the left, the long chord of which bears North 89°30'43" East 429.22 feet; thence North 89°24'39" East 976.80 feet to a point on the Northerly right-of-way line of State Road 32; thence North 87°44'13" West 631.08 feet along said Northerly right-of-way line; thence South 89°47'07" West 587.05 feet along said Northerly right-of-way line to a point on the East right-of-way line of Little Chicago Road, the next nine (9) courses being along said East right-of-way line; thence 1) North 19°44'33" West 60.56 feet; thence 2) North 08°01'10" West 243.21 feet; thence 3) North 12°40'00" West 319.83 feet; thence 4) North 03°11'06" West 290.98 feet; thence 5) North 00°09'43" West 407.26 feet; thence 6) North 01°10'00" West 189.04 feet; thence 7) North 01°52'24" East 200.08 feet; thence 8) North 00°16'37" East 700.00 feet; thence 9) North 01°10'44" West 196.01 feet to a point on the North line of said Southwest one-quarter; thence North 89°21'28" East 2544.65 feet along said North line to the Northeast corner of said Southwest one-quarter; thence South 00°25'26" West 2547.98 feet along the East line of said Southwest one-quarter; thence South 89°24'29" West 280.50 feet; thence South 00°25'26" West 132.00 foot to a point on the South line of said Southwest one-quarter; thence South 89°24'29" West 2363.45 feet to the place of beginning. Parcel contains 153.25 acres more or less.

Which Is Comprised Of:

(Promenade Woods of Noblesville)

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Northeast corner of the Southwest one-quarter of said Section 34; thence South 00°25'26" West 1231.01 feet more or less along the East line of said Southwest one-quarter to a point in the centerline of Mill Creek, the next seventy-one (71) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) North 59°52'36" West 114.73 feet; thence 2) North 87°00'01" West 66.16 feet; thence 3) North 63°40'23" West 49.08 feet; thence 4) North 45°00'59" West 35.67 feet; thence 5) North 82°34'05" West 26.80 feet; thence 6) South 73°07'33" West 57.91 feet; thence 7) South

83°29'06" West 54.49 feet; thence 8) North 85°16'02" West 161.13 feet; thence 9) South 75°15'17" West 64.31 feet; thence 10) North 43°10'54" West 46.44 feet; thence 11) South 73°34'07" West 27.43 feet; thence 12) North 78°59'07" West 58.66 feet; thence 13) South 45°58'34" West 37.87 feet; thence 14) South 83°08'49" West 34.32 feet; thence 15) North 58°28'51" West 48.75 feet; thence 16) South 87°19'44" West 28.73 feet; thence 17) North 62°56'44" West 62.51 feet; thence 18) South 55°01'00" West 25.79 feet; thence 19) South 66°37'12" West 59.75 feet; thence 20) North 53°29'13" West 20.75 feet; thence 21) North 10°15'25" West 49.76 feet; thence 22) North 21°28'29" West 54.13 feet; thence 23) North 66°59'32" West 63.80 feet; thence 24) North 25°04'00" West 30.82 feet; thence 25) North 50°34'20" West 29.25 feet; thence 26) North 26°07'53" West 37.99 feet; thence 27) North 09°48'15" East 23.95 feet; thence 28) North 23°18'07" West 17.64 feet; thence 29) North 72°38'05" West 40.72 feet; thence 30) North 33°03'47" West 25.43 feet; thence 31) North 10°39'27" West 22.25 feet; thence 32) North 31°09'45" West 24.24 feet; thence 33) North 08°26'59" East 52.21 feet; thence 34) North 32°21'34" West 89.68 feet; thence 35) North 20°59'18" West 55.08 feet; thence 36) North 54°50'15" West 47.55 feet; thence 37) North 29°29'19" West 32.11 feet; thence 38) North 09°34'22" West 120.18 feet; thence 39) North 52°28'03" West 38.90 feet; thence 40) South 61°19'47" West 49.14 feet; thence 41) North 66°28'19" West 27.23 feet; thence 42) North 08°32'45" West 38.34 feet; thence 43) North 71°33'54" East 48.64 feet; thence 44) North 04°52'27" West 39.98 feet; thence 45) North 39°41'29" West 54.73 feet; thence 46) North 67°14'55" West 93.64 feet; thence 47) North 88°54'34" West 34.27 feet; thence 48) South 47°44'34" West 16.97 feet; thence 49) South 09°28'04" East 19.84 feet; thence 50) South 67°01'03" East 52.77 feet; thence 51) South 16°25'36" West 41.04 feet; thence 52) South 01°15'52" West 57.71 feet; thence 53) South 65°34'06" West 32.61 feet; thence 54) North 72°29'42" West 46.39 feet; thence 55) North 29°39'17" West 35.84 feet; thence 56) North 10°56'14" West 49.00 feet; thence 57) North 48°17'43" West 25.56 feet; thence 58) South 42°22'28" West 45.69 feet; thence 59) North 85°40'52" West 20.20 feet; thence 60) North 22°06'34" West 41.77 feet; thence 61) North 69°05'20" West 18.38 feet; thence 62) South 51°21'22" West 16.16 feet; thence 63) South 84°04'46" West 21.16 feet; thence 64) North 52°35'30" West 30.07 feet; thence 65) North 23°45'42" West 14.51 feet; thence 66) North 21°27'34" East 77.72 feet; thence 67) North 34°15'02" East 22.39 feet; thence 68) North 32°10'00" West 34.20 feet; thence 69) North 60°15'09" West 71.23 feet; thence 70) North 28°34'18" West 32.90 feet; thence 71) North 10°56'51" West 58.84 feet; thence 72) North 41°48'43" West 16.71 feet; thence North 89°21'28" East 1880.35 feet along the North line of said Southwest one-quarter to the place of beginning. Parcel contains 35.69 acres more or less.

Also:

(The Villas at the Promenade of Noblesville)

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

COMMENCING at the Southeast corner of the Southwest one-quarter of said Section 34; thence

North 00°25'26" East 327.59 feet along the East line of said Southwest one-quarter to the TRUE PLACE OF BEGINNING; thence North 89°44'11" West 82.96 feet; thence Northwesterly 78.98 feet along a 195.00 foot radius curve to the right, the long chord of which bears North 78°06'45" West 78.44 feet; thence North 67°37'53" West 205.60 feet; thence Northwesterly 100.51 feet along a 255.00 foot radius curve to the left, the long chord of which bears North 78°55'21" West 99.86 feet; thence South 89°47'10" West 801.58 feet; thence Northwesterly 49.85 feet along a 30.00 foot radius curve to the right, the long chord of which bears North 42°36'23" West 44.31 feet; thence North 05°00'04" East 119.47 feet; thence Northeasterly 74.01 feet along a 90.00 foot radius curve to the right, the long chord of which bears North 28°33'36" East 71.94 feet; thence North 18°18'21" East 91.73 feet; thence Northwesterly 92.91 feet along a 289.00 foot radius curve to the right, the long chord of which bears North 07°15'59" West 92.51 feet; thence North 01°56'34" East 199.30 feet; thence Northwesterly 99.64 feet along a 232.00 foot radius curve to the left, the long chord of which bears North 11°37'26" West 98.88 feet; thence North 26°54'07" East 164.91 feet; thence North 50°25'05" East 457.29 feet to a point in the centerline of Mill Creek, the next fifteen (15) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) South 58°28'51" East 48.75 feet; thence 2) North 83°08'49" East 34.32 feet; thence 3) North 45°58'34" East 37.87 feet; thence 4) South 78°59'07" East 58.66 feet; thence 5) North 73°34'07" East 27.43 feet; thence 6) South 43°10'54" East 46.44 feet; thence 7) North 75°15'17" East 64.31 feet; thence 8) South 85°16'02" East 161.13 feet; thence 9) North 83°29'06" East 54.49 feet; thence 10) North 73°07'33" East 57.91 feet; thence 11) South 82°34'05" East 26.80 feet; thence 12) South 45°00'59" East 35.67 feet; thence 13) South 63°40'23" East 49.08 feet; thence 14) South 87°00'01" East 66.16 feet; thence 15) South 59°52'36" East 114.73 feet; thence South 00°25'26" West 1121.38 feet along the East line of said Southwest one-quarter to the place of beginning. Parcel contains 30.27 acres more or less.

Also:**(Promenade Creek of Noblesville)**

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest one-quarter of said Section 34; thence North 89°21'28" East 100.18 feet along the North line of said Southwest one-quarter to the TRUE PLACE OF BEGINNING; thence continuing North 89°21'28" East 664.31 feet along said North line to a point in the centerline of Mill Creek, the next fifty-six (56) courses are along the approximate centerline of said Mill Creek; thence 1) South 41°48'43" East 16.71 feet; thence 2) South 10°56'51" East 58.84 feet; thence 3) South 28°34'18" East 32.90 feet; thence 4) South 60°15'09" East 71.23 feet; thence 5) South 32°10'00" East 34.20 feet; thence 6) South 34°15'02" West 22.39 feet; thence 7) South 21°27'34" West 77.72 feet; thence 8) South 23°45'42" East 14.51 feet; thence 9) South 52°35'30" East 30.07 feet; thence 10) North 84°04'46" East 21.16 feet; thence 11) North 51°21'22" East 16.16 feet; thence 12) South 69°05'20" East 18.38 feet;

thence 13) South 22°06'34" East 41.77 feet; thence 14) South 85°40'52" East 20.20 feet; thence 15) North 42°22'28" East 45.69 feet; thence 16) South 48°17'43" East 25.56 feet; thence 17) South 10°56'14" East 49.00 feet; thence 18) South 29°39'17" East 35.84 feet; thence 19) South 72°29'42" East 46.39 feet; thence 20) North 65°34'06" East 32.61 feet; thence 21) North 01°15'52" East 57.71 feet; thence 22) North 16°25'36" East 41.04 feet; thence 23) North 67°01'03" West 52.77 feet; thence 24) North 09°28'04" West 19.84 feet; thence 25) North 47°44'34" East 16.97 feet; thence 26) South 88°54'34" East 34.27 feet; thence 27) South 67°14'55" East 93.64 feet; thence 28) South 39°41'29" East 54.73 feet; thence 29) South 04°52'27" East 39.98 feet; thence 30) South 71°30'54" West 48.64 feet; thence 31) South 08°32'45" East 38.34 feet; thence 32) South 66°28'19" East 27.23 feet; thence 33) North 61°19'47" East 49.14 feet; thence 34) South 52°28'03" East 38.90 feet; thence 35) South 09°34'22" East 120.18 feet; thence 36) South 29°29'19" East 32.11 feet; thence 37) South 54°50'15" East 47.55 feet; thence 38) South 20°59'18" East 55.08 feet; thence 39) South 32°21'34" East 89.68 feet; thence 40) South 08°26'59" West 52.21 feet; thence 41) South 31°09'45" East 24.24 feet; thence 42) South 10°39'27" East 22.25 feet; thence 43) South 33°03'47" East 25.43 feet; thence 44) South 72°38'05" East 40.72 feet; thence 45) South 23°18'07" East 17.64 feet; thence 46) South 09°48'15" West 23.95 feet; thence 47) South 26°07'53" East 37.99 feet; thence 48) South 50°34'20" East 29.25 feet; thence 49) South 25°04'00" East 30.82 feet; thence 50) South 66°59'32" East 63.80 feet; thence 51) South 21°28'29" East 54.13 feet; thence 52) South 10°15'25" East 49.76 feet; thence 53) South 53°29'13" East 20.75 feet; thence 54) North 66°37'12" East 59.75 feet; thence 55) North 55°01'00" East 25.79 feet; thence 56) South 62°56'44" East 62.51 feet; thence 57) North 87°19'44" East 28.73 feet; thence South 50°25'05" West 457.29 feet; thence South 26°54'07" West 164.91 feet; thence Northwesterly 79.19 feet along a 232.00 foot radius curve to the left, the long chord of which bears North 33°42'22" West 78.80 feet; thence South 46°30'57" West 54.00 feet; thence Southeasterly 114.76 feet along a 178.00 foot radius curve to the right, the long chord of which bears South 25°00'50" East 112.79 feet; thence North 90°00'00" West 1262.37 feet to a point on the East right-of-way line of Little Chicago Road, the next five (5) courses being along said East right-of-way line; thence 1) North 00°09'43" West 311.99 feet; thence 2) North 01°10'00" West 189.04 feet; thence 3) North 01°52'24" East 200.08 feet; thence 4) North 00°16'37" East 700.00 feet; thence 5) North 01°10'44" West 196.01 feet to the place of beginning. Parcel contains 45.87 acres more or less.

Also:

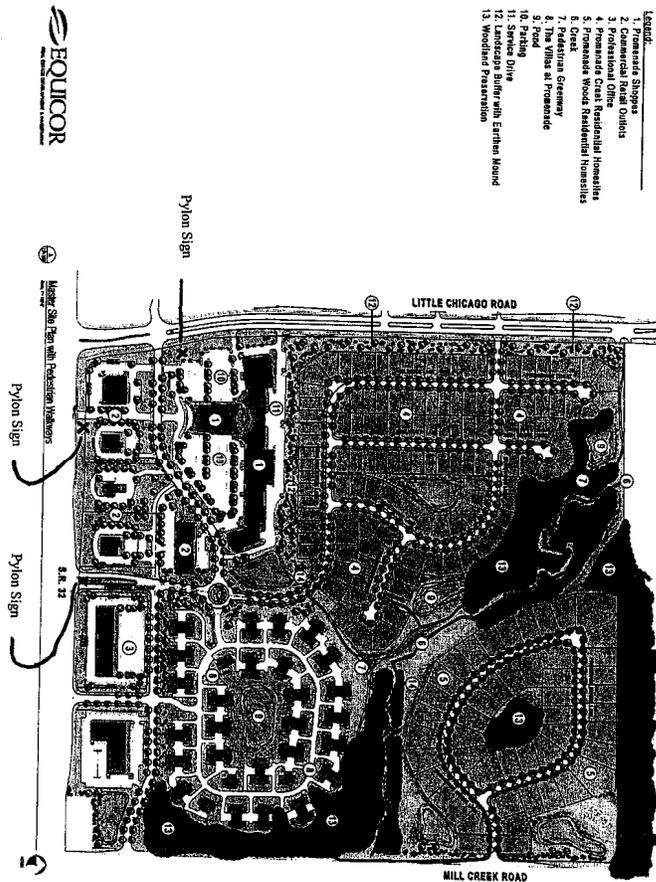
(Promenade Commercial Tract)

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Southwest corner of the Southwest one-quarter of said Section 34; thence North 00°24'21" East 99.23 feet along the West line of said Southwest one-quarter; thence Northeasterly 16.50 feet along a 122,676.67 foot radius curve to the left, the long chord of which

bears North 89°38'27" East 16.50 feet; thence South 47°05'31" East 72.93 feet; thence Northeasterly 429.22 feet along a 122,626.67 foot radius curve to the left, the long chord of which bears North 89°60'43" East 429.22 feet; thence North 89°24'39" East 976.80 feet to a point on the Northerly right-of-way line of State Road 32; thence North 87°44'13" West 631.08 feet along said Northerly right-of-way line; thence South 89°47'07" West 587.05 feet along said Northerly right-of-way line to a point on the East right-of-way line of Little Chicago Road, the next five (5) courses being along said East right-of-way line; thence 1) North 19°44'33" West 60.56 feet; thence 2) North 08°01'10" West 243.21 feet; thence 3) North 12°40'00" West 319.83 feet; thence 4) North 03°11'06" West 290.98 feet; thence 5) North 00°09'43" West 95.27 feet; thence North 90°00'00" East 1262.37 feet; thence Northwesterly 114.76 feet along a 178.00 foot radius curve to the left, the long chord of which bears North 25°00'50" West 112.79 feet; thence North 46°30'57" East 54.00 feet; thence Southeasterly 178.83 feet along a 232.00 foot radius curve to the right, the long chord of which bears South 21°24'07" East 174.44 feet; thence South 01°56'34" West 199.30 feet; thence Southeasterly 92.91 feet along a 289.00 foot radius curve to the left, the long chord of which bears South 07°15'59" East 92.51 feet; thence South 18°18'21" West 91.73 feet; thence Southwesterly 74.01 feet along a 90.00 foot radius curve to the right, the long chord of which bears South 28°33'36" West 71.94 feet; thence South 05°00'04" West 119.47 feet; thence Southeasterly 49.85 feet along a 30.00 foot radius curve to the left, the long chord of which bears South 42°36'23" East 44.31 feet; thence North 89°47'10" East 801.58 feet; thence Southeasterly 100.51 feet along a 255.00 foot radius curve to the right, the long chord of which bears South 78°55'21" East 99.86 feet; thence South 67°37'53" East 205.60 feet; thence Southeasterly 78.98 feet along a 195.00 foot radius curve to the left, the long chord of which bears South 78°06'45" East 78.44 feet; thence South 89°44'11" East 82.96 feet to a point on the East line of said Southwest one-quarter; thence South 00°25'26" West 195.59 feet along said East line; thence South 89°24'29" West 280.50 feet; thence South 00°25'26" West 132.00 feet to a point on the South line of said Southwest one-quarter; thence South 89°24'29" West 2363.45 feet along said South line to the place of beginning. Parcel contains 41.42 acres more or less.

EXHIBIT "B" [Plot Plan]



LP 100 1" = 100' 1/8" = 100'	Equicor Companies, LLC Promenade at Noblesville State Road 32 and Little Chicago Road Master Site Plan with Pedestrian Walkways	REMENSCHNEIDER ASSOCIATES, INC. DESIGN ARCHITECTURE SITE PLANNING LANDSCAPE ARCHITECTURE 20 West Field Lane, Suite 100, Indianapolis, Indiana 46202-2897 317.632.2000 Fax: 317.632.1961
	<small> This drawing is the property of Remenschneider Associates, Inc. and is not to be used, copied, or reproduced in any form without the written consent of Remenschneider Associates, Inc. The user of this drawing shall be held responsible for any errors or omissions. </small>	

2008013131 AMND DECL \$45.00
03/12/2008 01:11:18P 17 PGS
Jennifer J Hayden
HAMILTON County Recorder IN
Recorded as Presented

44.00
17
1.00
NONE

Cross Ref: Instrument No. 20060058034

FIRST AMENDMENT TO DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "Amendment") is made as of this 3rd day of February, 2008, by PROMENADE COMMERCIAL, LLC, an Indiana limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the Development Tract (as defined in the Declaration);

WHEREAS, Declarant established a general plan of improvement for the Development Tract for integrated mixed use development, and establishment of common easements for the benefit of the Parcels therein, by executing that certain Declaration of Easements, Covenants and Restrictions, dated August 31, 2006, and recorded September 29, 2006, as Instrument No. 20060058034 in the office of the Recorder of Hamilton County, Indiana (the "Declaration");

WHEREAS, pursuant to Section 28 of the Declaration, Declarant may unilaterally amend the Declaration by recording an executed written instrument at any time while Declarant owns any part of the Development Tract;

WHEREAS, Declarant has agreed to sell to Hook-SupeRx, L.L.C., a Delaware limited liability company ("Buyer"), and Buyer has agreed to purchase from Declarant, a certain portion of the Commercial Tract more particularly described on Exhibit 1 attached hereto and depicted and identified as the "Property" on Exhibit 4 attached hereto (the "CVS Parcel"); and

WHEREAS, to induce Buyer to purchase the CVS Parcel from Declarant, Declarant desires to amend the Declaration, as more particularly set forth in this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated as if fully set forth herein.
2. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration.
3. Amendments. Declarant hereby amends and supplements the Declaration with the following provisions:

a. Northern Prohibited Use. With respect to that portion of the Commercial Tract located north of the CVS Parcel, as legally described on Exhibit 2 attached hereto and as depicted and identified as "Northern Restricted Property" on Exhibit 4 attached hereto (the "Northern Restricted Property"), such Northern Restricted Property shall not be used for a retail pharmacy (the "Northern Prohibited Use"); provided, however, that said restriction shall not apply to a pharmacy department contained within a grocery store or mass merchandiser with larger than 15,000 square feet of retail floor area. Notwithstanding anything to the contrary contained herein, unless due to fire, casualty or Force Majeure preventing or resulting in the cessation of business operations (and providing that the Owner or Occupant of the CVS Parcel thereafter diligently pursues such repair or other action as is necessary to commence business operations again), if the Owner or Occupant of the CVS Parcel either, (i) fails to commence operation of a retail pharmacy on the CVS Parcel within twenty-four (24) months of the date of this Amendment, or (ii) after commencing operations on the CVS Parcel, ceases to operate a retail pharmacy on the CVS Parcel for a period of at least 180 consecutive days, then in either case, the Northern Prohibited Use shall be of no further force and effect.

b. Outlot Restrictions. With respect to that portion of the Commercial Tract that fronts along State Road 32 between Little Chicago Road on the west and Promenade of Noblesville Parkway (as shown and identified on Exhibit 4) on the east, except for the CVS Parcel, and consisting of one or more outlots, as legally described on Exhibit 3 attached hereto and as depicted and identified as "Outlot Restricted Property" on Exhibit 4 attached hereto (the "Outlot Restricted Property"), such Outlot Restricted Property shall not be used for the following: (a) a health and beauty aids store, (b) a vitamin store, (c) a pharmacy mail order facility, (d) a drug store, (e) a pharmacy prescription department, (f) a store providing expedited photo developing or processing services, (g) a greeting card store; and/or (h) a dollar store, including Dollar General, Dollar Tree, Family Dollar, etc. (collectively, the "Outlot Prohibited Uses"). As used herein, the term "pharmacy prescription department" shall not include the dispensing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as health maintenance organizations, where such dispensing is incidental to the operation of the business operated on the Outlot Restricted Property; and a "health and beauty aids store" as used in herein shall mean a store which devotes more than 10% of its retail selling space to the display and sale of health and beauty aids. Notwithstanding anything to the contrary contained herein, unless due to fire, casualty or Force Majeure resulting in the cessation of business operations (and providing that the Owner or Occupant of the CVS Parcel thereafter diligently pursues such repair or other action as is necessary to commence business operations again), if the Owner or Occupant of the CVS Parcel either, (i) fails to commence operation of a retail pharmacy on the CVS Parcel within twenty-four (24) months of the date of this Amendment, or (ii) after commencing operations on the CVS Parcel, ceases to sell any of the products listed under the Outlot Prohibited Uses for a period of at least 180 consecutive days, then in either case, the restricted sale of such product or products pursuant

to the Outlot Prohibited Uses shall be of no further force and effect. Provided however, the prohibition against a dollar store shall remain in place so long as Buyer or an affiliate of CVS Caremark Corporation, its successors or assigns, commences operation of a retail pharmacy on the CVS Parcel within twenty-four (24) months of the date of this Amendment and thereafter continuously (except in the case of a Force Majeure event) operates a retail pharmacy on the CVS Parcel. Notwithstanding anything to the contrary contained herein, the following shall be permitted to operate on the Outlot Restricted Property: (u) a store which devotes less than 10% of its retail selling space in the aggregate to the display and sale of greeting cards; (v) a beauty salon which sells health and beauty aids only as an incidental part of its operations; (w) a store which devotes less than 10% of its retail selling space in the aggregate to the display and sale of vitamins, health foods and health supplements; (x) a retail establishment having as its primary use the sale of cameras and related equipment, which establishment provides photo processing and film developing services only as a complimentary part of its business; (y) a retail establishment that, as an ancillary part of its operations, offers the reprinting of photographs, but not the expedited processing or developing of film; and (z) a photography studio.

c. Section 5(c). Section 5(c) of the Declaration is hereby deleted in its entirety and replaced with the following:

"No Building on a Parcel shall exceed thirty feet or two stories in height, measured from finished grade, without written approval by Declarant."

d. Section 6(a). The first and second sentences of Section 6(a) of the Declaration are hereby deleted in their entirety and replaced with the following:

"Declarant hereby reserves for itself, and hereby grants to all Owners and Occupants, for their use, and for the use of their respective Permittees, in common with all others entitled to use the same, nonexclusive easements over those portions of the Common Areas of the Development Tract where common access roadways are constructed, including, without limitation, the roadways shown on Exhibit B attached to the Declaration and Exhibit 4 (but not including private driveways or roadways constructed within the boundaries of individual Parcels), for vehicular and pedestrian access, ingress and egress; provided, that to the extent any driveways, entrances, or other roadways within an individual Parcel connect to such common access roadways and are located within the Common Areas where the easement is located, the Owner of any such Parcel may alter the location of any roadways, driveways, or entrances within the boundaries of its Parcel (including the location of any connection to the common access roadway) provided that such relocation does not prevent or obstruct access over the common roadway by other Owners and so

long as Declarant has approved such relocation to the extent required by Section 4(a) hereof. In no event shall the access easements created hereunder be construed to create any rights or easements to park in any parking areas within the boundaries of any Parcel."

e. Section 6(b)(ii). The phrase "utility lines for" shall be inserted in Section 6(b)(ii) of the Declaration immediately after the phrase "repair, relocation and removal of".

f. Section 7(b). Section 7(b) of the Declaration is hereby deleted in its entirety.

g. Section 7(d). The following sentence shall be inserted as the first sentence of Section 7(d):

"The Declarant shall maintain and keep in good condition and repair the Common Areas. The maintenance shall include, but need not be limited to those matters described in Section 7(d)(ii). The Declarant is hereby authorized to act and shall act on behalf of, for the benefit of and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of maintenance expenses, and the collection and enforcement of any such payments as provided herein."

h. Section 7(d)(ii). The second full paragraph of Section 7(d)(ii) is hereby deleted and replaced with the following:

"For the purpose of this Section 7(d), Common Area expenses shall include all costs and expenses incurred in operating, managing, insuring and maintaining the Common Areas of the Master Development by Declarant, other than the following costs: debt service payments, leasing commissions and costs of constructing or improving Buildings in the Master Development. Such maintenance expenses shall include but not be limited to management fees of not more than ten percent (10%) of all maintenance expenses, a capital reserve fund of not more than ten percent (10%) of all maintenance expenses, the cost of irrigating, equipping, lighting, repairing, replacing and maintaining such Common Areas and facilities of the Master Development, and further including, without limitation painting, lighting, paving, repaving, sanitary control, removal of snow and ice, trash, rubbish, garbage and other refuse, repair and replacement of common roadways and other facilities in such areas, landscaping, grass mowing, depreciation on or rentals of machinery and equipment used in such maintenance, the cost of personnel to direct parking,

to act as security guards, and to police such areas, the cost and expense to comply (other than compliance required in connection with the initial development of any portion of the Master Development) with all laws, rules regulations and ordinances including, but not limited to, the 2006 Storm Cleanliness Ordinance, the cost and expense incurred in common lighting of the Master Development, and the cost and expense of replacement, relocation, repair or other maintenance of common roadways, facilities or other improvements as may be required in the future (other than as may be required in connection with the initial development of any portion of the Master Development) to comply with applicable laws. Expenses incurred by Declarant for depreciable equipment shall be amortized over the expected life of the equipment consistent with generally accepted accounting practices. All insurance proceeds received on account of loss of any items, the replacement or repair of which is included in such maintenance costs, shall be credited against such costs, thereby reducing the same for this purpose.

The Declarant may construct improvements and facilities for storm water management control within the Development Tract (the initial development costs of which shall be borne by the Declarant and not included in Common Area expenses). The maintenance and repair of storm water management facilities located on a Parcel shall be performed by the Owner of such Parcel. The ongoing maintenance and repair of storm water management facilities located within Common Areas shall be performed by the Declarant and shall be chargeable as Common Area Expenses, unless otherwise provided under a separate agreement or easement entered into by the Declarant. Notwithstanding the obligation of an Owner to maintain storm water management facilities within its own Parcel, the Declarant shall have the right to conduct additional maintenance and repair to those storm water management facilities benefiting all or a portion of the Development Tract as it may reasonably deem necessary or desirable. The Owner of any Parcel on which there is located storm water management facilities shall be also responsible for the following items of maintenance, where applicable: grass mowing with reasonable frequency and the removal of debris and other matter where such debris or matter has impeded or threatens to impede the free flow of storm water through drainage structures."

i. Section 7(f). A new Section 7(f) of the Declaration shall be added as follows:

"(f) Rights of Owners. In the event that Declarant (or its assignee pursuant to Section 13(b) hereof, if applicable) fails to

maintain the Common Areas as required under Section 7(d) hereof, any Owner may provide written notice to Declarant (or its assignee, if applicable) of such failure, including a reasonably detailed description of the failed maintenance task, after which Declarant (or its assignee, if applicable) shall have thirty (30) days to commence a cure of such failed maintenance task and thereafter shall diligently perform such task to completion. If Declarant (or its assignee, if applicable) has not commenced such a cure within such thirty (30) day period, then the notifying Owner may perform such failed maintenance task and shall either (i) receive reimbursement from the Declarant (or its assignee, if applicable) for the reasonable expenditures of such Owner in performing the Declarant's failed maintenance task, or (ii) offset such expenditures against such Owner's next payment of Common Area expenses in an amount equal to the reasonable expenditures of such Owner in performing the failed maintenance task. In either case, the performing Owner must supply Declarant with a reasonable accounting of its expenditures, including copies of invoices reasonably supporting the amount of any reimbursement or offset request, and such accounting shall be made in writing to Declarant (or its assignee, if applicable) not later than fifteen (15) business days following such Owner's payment for completion of the failed maintenance task, or such Owner's expenditures shall not be reimbursable. An Owner may immediately perform such failed maintenance task without notice to the Declarant (or its assignee, as applicable), if such failed maintenance task is reasonably likely to cause an imminent and substantial threat to human health, safety or property on, or obstruct access to, such Owner's Parcel."

j. Section 8(g). Section 8(g) is hereby amended as follows:

(i) The opening sentence of Section 8(g) of the Declaration is hereby deleted in its entirety and replaced with the following:

"The following operations and uses, together with all uses prohibited by law, shall not be permitted on any Parcel in the Development Tract:"

(ii) Section 8(g)(22) is hereby deleted in its entirety and replaced with the following:

"Sanatorium or convalescent home, which shall not include an assisted living facility (which is an expressly permitted use hereunder)."

(iii) The following prohibited uses shall be added as items 8(g)(24)-(55):

-
- "(24) disco, night club or discotheque;
 - (25) bowling alley;
 - (26) billiard or bingo parlor;
 - (27) flea market;
 - (28) off-track betting parlor;
 - (29) auto repair or body shop;
 - (30) facility for the sale, rental or leasing of new or used motor vehicles, trailers or mobile homes;
 - (31) facility for any use which is dangerous or constitutes a nuisance;
 - (32) skating rink;
 - (33) arcade, pinball or computer game room, provided, however, the operation of any of the foregoing shall not be prohibited as an incidental part of any business otherwise permitted in the Development Tract;
 - (34) laundries/dry cleaners with on-site plant;
 - (35) firing (gun) range;
 - (36) shooting gallery/range;
 - (37) fire station;
 - (38) training or educational facility (including, without limitation, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers);
 - (39) facility for the sale or rental of used goods (including pawn shops, thrift shops, secondhand or consignment stores) or any facility selling new or used merchandise as a wholesale operation, a liquidation operation, odd lots, lot sales, factory close-outs or imperfect goods;
 - (40) secondhand government surplus;
 - (41) check or payroll advance service (as a primary use);

-
- (42) governmental unemployment agency, service or commission;
 - (43) auction, fire or going out-of-business sale businesses;
 - (44) auction room;
 - (45) engraving service;
 - (46) ballroom;
 - (47) bathhouse;
 - (48) slot car racetrack;
 - (49) blood plasma center;
 - (50) fireworks sales;
 - (51) tattoo shop;
 - (52) substance abuse treatment center;
 - (53) lawn mower repair shop;
 - (54) free-standing automated teller machines, provided that an automated teller machine located inside a building as an accommodation to patrons shall be permitted so long as the same is accessible only from the interior of the building and has no signage visible from the exterior of such building;
 - (55) dollar store."

k. Section 13(b). Section 13(b) of the Declaration is hereby deleted in its entirety and replaced with the following:

"Declarant shall, at any time, have the right to assign its rights and responsibilities as "Declarant" under this Declaration to the Owner of any Parcel who shall, upon acceptance of such assignment and assumption of such responsibilities, then become the "Declarant" under this Declaration; provided, that Declarant shall be required to make such an assignment to an Owner or association of Owners at the time when Declarant ceases to own any Parcel in the Development Tract."

l. Section 14(a). The first sentence of Section 14(a) of the Declaration is hereby deleted and replaced with the following:

"If, during the first twenty (20) years of the term hereof (the "Restoration Period"), any Buildings or improvements on any Parcel within the Commercial Tract are damaged or destroyed by fire or other casualty, the Owner of such Parcel shall promptly proceed to repair and restore the same to substantially the same condition as existed immediately prior to the occurrence of such fire or other casualty (or redevelop the Parcel with new Buildings and improvements having substantially the same quality of construction as the Buildings and improvements that existed prior to such fire or casualty) unless waived by Declarant."

m. Section 28. Section 28 is hereby amended as follows:

(i) The following language shall be added after the parenthetical "(including any entity affiliated with Declarant)":

“, but no such amendment that would materially affect the rights or obligations of any Owner, or materially affect such Owner's Parcel, shall be effective without the written approval of such Owner”

(ii) The following sentence shall be added as the last sentence of Section 28:

"Notwithstanding the foregoing, no amendment shall be made to this Declaration which would abrogate or alienate the responsibilities of the Declarant (or its successors or assigns) or any Owner (as applicable) with respect to the water quality treatment facilities on the Development Tract."

n. Section 29. A new Section 29 is hereby added to the Declaration, as follows:

"Section 29. Platting. Declarant shall have the right, from time to time and at any time, to file a plat with the City of Noblesville Plan Commission (the "Commission") with respect to all or any portion of the Development Tract, and any future platting or replatting by Declarant of the Development Tract shall be binding upon Owners and the Development Tract, subject to the restrictions contained in this Section 29. Each Owner authorizes and appoints Declarant as the Owner's agent to execute, file and record all plats of the Development Tract; provided, no such plat shall violate the restrictions or limitations as to platting contained in the deed(s) granted from Declarant to such Owner(s). Not later than ten (10) days prior to filing a plat with the Commission, Declarant shall provide each Owner with a copy of the plat for the Owner's review and comment, but Declarant shall not (unless otherwise required in

an affected Owner's deed) be required to obtain any Owner's consent to proceed with the plat."

4. Enforceability. Except as expressly modified by this Amendment, the Declaration shall remain in full force and effect. If there is a conflict between the terms of this Amendment and the terms of the Declaration, the terms of this Amendment shall govern.

5. Exhibits. Each of the Exhibits attached hereto is expressly incorporated into and made part of the Declaration.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant has executed this Amendment as of the day, month and year first above written.

"DECLARANT"

PROMENADE COMMERCIAL, LLC, an Indiana limited liability company

By: Greg M. Small
Greg M. Small, Manager

STATE OF INDIANA)
COUNTY OF Marion) SS:

Before me, a Notary Public, personally appeared Greg M. Small, the Manager of Promenade Commercial, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Amendment, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 22 day of February, 2008.



Glen E. Meinecke
(signature)

(printed name) Notary Public

My Commission Expires: _____

County of Residence: _____

EXHIBIT 1
Legal Description (CVS Parcel)

A part of the Southwest Quarter of Section 34, Township 19 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the southwest corner of the Southwest Quarter of Section 34, Township 19 North, Range 4 East; thence North 00 degrees 24 minutes 24 seconds East (assumed bearing) 99.18 feet along the west line of said Southwest Quarter; thence continue North 00 degrees 24 minutes 24 seconds East 475.20 feet along said west line; thence North 77 degrees 32 minutes 47 seconds East 153.84 feet to the eastern right-of-way line of Little Chicago Road described in Instrument No. 2007000214 in the Office of the Recorder of Hamilton County, Indiana; the next two (2) courses are along said eastern right-of-way line; (1) thence South 12 degrees 39 minutes 57 seconds East 229.23 feet; (2) thence South 07 degrees 58 minutes 54 seconds East 1.48 feet to the POINT OF BEGINNING of this description; thence North 33 degrees 21 minutes 43 seconds East 27.94 feet; thence North 79 degrees 23 minutes 26 seconds East 138.07 feet; thence easterly 64.21 feet along a 195.00 foot radius curve to the right, the long chord of which bears North 88 degrees 49 minutes 28 seconds East 63.92 feet; thence southeasterly 70.66 feet along a 88.00 foot radius curve to the right, the long chord of which bears South 58 degrees 44 minutes 19 seconds East 68.78 feet; thence southerly 88.14 feet along a 288 foot radius curve to the right, the long chord of which bears South 08 degrees 46 minutes 02 seconds East 87.80 feet; thence South 00 degrees 00 minutes 00 seconds East 203.08 feet; thence South 44 degrees 53 minutes 34 seconds West 28.34 feet to the northerly right-of-way line of State Road 32 per said Instrument No. 2007000214; thence South 89 degrees 47 minutes 07 seconds West 212.99 feet along said northerly right-of-way line to said easterly right-of-way line of Little Chicago Road; the next two (2) courses are along said easterly right-of-way line; (1) thence North 19 degrees 44 minutes 33 seconds West 60.56 feet; (2) thence North 08 degrees 01 minutes 10 seconds West 241.71 feet to the POINT OF BEGINNING.

The land described above being Lot #1 shown on the Promenade Shops Secondary Plat dated February 6, 2008, recorded with the Hamilton County Recorder on February 14, 2008 as Instrument No. 2008007316 in Plat Cabinet 4, Page 431.

EXHIBIT 2
Legal Description Northern Restricted Property

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Hamilton County, Indiana, more particularly described as:

COMMENCING at the Southwest corner of said Southwest one-quarter; thence North 00°24'21" East 1081.81 feet along the West line of said Southwest one-quarter; thence North 90°00'00" East 110.32 feet to a point on the East right-of-way line of Little Chicago Road and the TRUE PLACE OF BEGINNING; thence continuing North 90°00'00" East 849.76 feet; thence South 26°04'32" West 27.87 feet; thence South 52°16'08" East 180.81 feet; thence South 47°16'04" East 193.21 feet; thence South 70°47'01" East 73.52 feet; thence Southwesterly 105.30 feet along a 255.00 foot radius curve to the left, the long chord of which bears South 05°58'12" West 104.56 feet; thence South 05°51'37" East 108.85 feet; thence Southeasterly 36.93 feet along a 195.00 foot radius curve to the right, the long chord of which bears South 00°26'03" East 36.88 feet; thence Southwesterly 57.37 feet along a 89.08 foot radius curve to the right, the long chord of which bears South 20°46'59" West 56.39 feet; thence Southwesterly 90.26 feet along a 288.00 foot radius curve to the right, the long chord of which bears South 80°52'03" West 89.89 feet; thence Southwesterly 74.80 feet along a 280.00 foot radius curve to the left, the long chord of which bears South 82°11'32" West 74.58 feet; thence South 74°32'20" West 103.39 feet; thence Southwesterly 370.59 feet along a 766.00 foot radius curve to the right, the long chord of which bears South 88°23'55" West 366.98 feet; thence Northwesterly 59.09 feet along a 88.00 foot radius curve to the right, the long chord of which bears North 58°30'24" West 57.98 feet; thence Northeasterly 131.70 feet along a 288.00 foot radius curve to the right, the long chord of which bears North 03°50'08" East 130.56 feet; thence North 73°03'50" West 54.00 feet; thence South 16°56'10" West 63.04 feet; thence Southwesterly 58.77 feet along an 88.00 foot radius curve to the right, the long chord of which bears South 36°04'01" West 57.68 feet; thence Southwesterly 93.54 feet along a 288.00 foot radius curve to the right, the long chord of which bears South 87°50'39" West 93.13 feet; thence Southwesterly 79.03 feet along a 255.00 foot radius curve to the left, the long chord of which bears South 88°16'10" West 78.72 feet; thence South 79°23'26" West 140.20 feet; thence North 56°40'55" West 28.81 feet to a point on said East right-of-way line; the next three (3) courses are along said East right-of-way line; (1) thence North 12°40'00" West 221.17 feet; (2) thence North 03°11'06" West 290.98 feet; (3) thence North 00°09'43" West 95.27 feet to the place of beginning.

The land described above being Block "A" shown on the Promenade Shops Secondary Plat dated February 6, 2008, recorded with the Hamilton County Recorder on February 14, 2008 as Instrument No. 2008007316 in Plat Cabinet 4, Page 431.

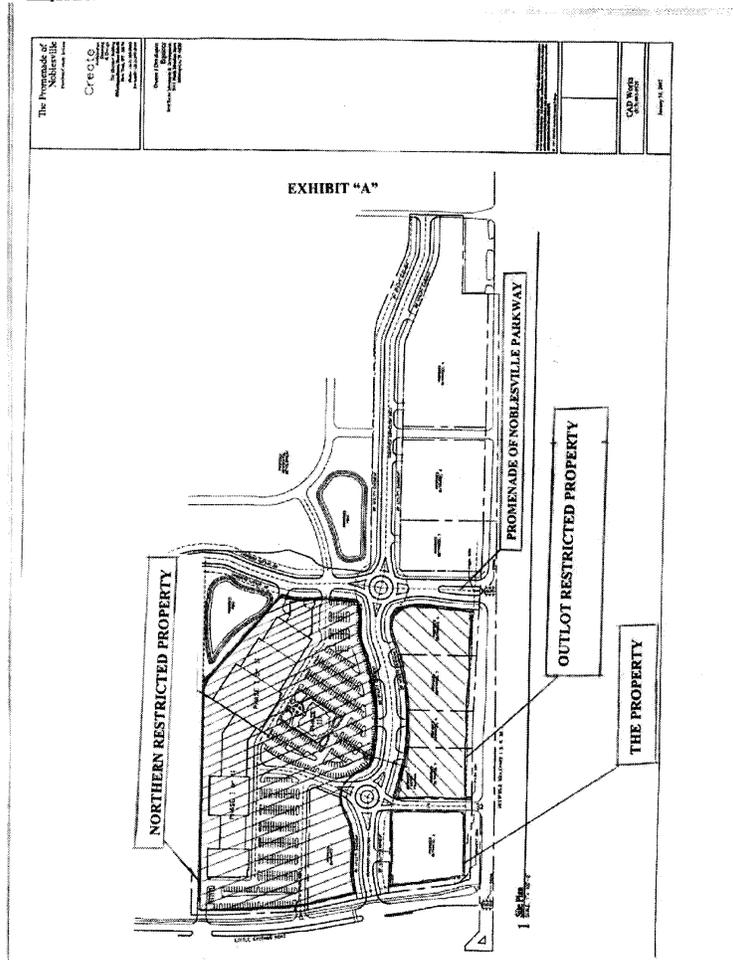
EXHIBIT 3
Legal Description Outlot Restricted Property

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Hamilton County, Indiana, more particularly described as:

COMMENCING at the Southwest corner of said Southwest one-quarter; thence North 00°24'21" East 85.13 feet along the West line of said Southwest one-quarter; thence North 89°47'07" East 571.33 feet along the extended North right-of-way line and the North right-of-way line of State Road 32 to the TRUE PLACE OF BEGINNING; thence North 45°06'26" West 28.23 feet; thence North 00°00'00" West 193.20 feet; thence Northeasterly 67.98 feet along an 88.00 foot radius curve to the right, the long chord of which bears North 22°07'46" East 66.30 feet; thence Northeasterly 102.70 feet along a 288.00 foot radius curve to the right, the long chord of which bears North 89°52'52" East 102.16 feet; thence Northeasterly 368.45 feet along an 826.00 foot radius curve to the left, the long chord of which bears North 87°19'04" East 365.40; thence North 74°32'20" East 103.39 feet; thence Northeasterly 64.94 feet along a 220.00 foot radius curve to the right, the long chord of which bears North 82°59'42" East 64.70; thence Southeasterly 68.33 feet along an 88.00 foot radius curve to the right, the long chord of which bears South 66°18'15" East 66.63 feet; thence Southeasterly 79.06 feet along a 288.00 foot radius curve to the right, the long chord of which bears South 14°49'32" East 78.81 feet; thence Southeasterly 58.29 feet along a 240.00 foot radius curve to the right, the long chord of which bears South 00°00'14" East 58.15 feet; thence South 06°57'14" West 103.83 feet; thence Southwesterly 29.40 feet along a 235.00 foot radius curve to the left, the long chord of which bears South 03°22'12" West 29.38 feet; thence South 00°12'50" East 29.78 feet; thence South 46°01'28" West 5.13 feet to a point on said North right-of-way line; the next three (3) courses are along said North right-of-way line; (1) thence North 86°18'10" West 72.26 feet; (2) thence South 89°24'29" West 421.25 feet; (3) thence South 89°47'07" West 206.29 feet to the place of beginning. Contains 4.73 acres more or less.

The land described above being Block "B" shown on the Promenade Shops Secondary Plat dated February 6, 2008, recorded with the Hamilton County Recorder on February 14, 2008 as Instrument No. 2008007316 in Plat Cabinet 4, Page 431.

EXHIBIT 4
Depiction of CVS Parcel, Northern Restricted Property and Outlot Restricted Property



CONSENT AND SUBORDINATION OF MORTGAGEE

The undersigned, as an authorized representative of National City Bank, a national banking association, being the holder of that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing, granted by the above defined Declarant as of August 31, 2006, and recorded as Instrument No. 200600058035 in the Office of the Recorder of Hamilton County, Indiana (the "Mortgage"), with respect to the above referenced Development Tract, hereby consents to the execution and recording of the above and foregoing First Amendment to Declaration of Easements, Covenants and Restrictions, and further agrees that the Mortgage shall be subordinate and subject to the provisions of the above and foregoing First Amendment to Declaration of Easements, Covenants and Restrictions; provided, however, except and to the extent that the Mortgage is subordinated by this Consent and Subordination of Mortgagee, such Mortgage shall remain in full force and effect.

Executed this 7th day of DECEMBER, 2007.

[SIGNATURE ON FOLLOWING PAGE]

NATIONAL CITY BANK, a national banking association

By: [Signature]

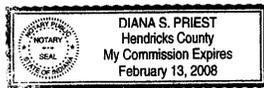
Printed: John J. Thullen

Title: Senior Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared JOHN J. THULLEN, the SENIOR VICE PRESIDENT of National City Bank, a national banking association, who acknowledged the execution of the foregoing Consent and Subordination of Mortgagee for and on behalf of said entity.

WITNESS my hand and Notarial Seal this 7th day of DECEMBER, 2007.



[Signature]
Notary Public
Diana S. Priest
(Printed Signature)

My Commission Expires: 02/13/08

My County of Residence: Hendricks

This instrument was prepared by and return after recording to: Steven J. Rypma, Ice Miller LLP, One American Square, Suite 3100, Indianapolis, IN 46282-0200. (317) 236-5825.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. Steven J. Rypma.

I/2034822.4

(1)

53.00
21

2008048234 AMND DECL \$53.00
09/24/2008 11:57:59A 21 PGS
Jennifer J Hayden
HAMILTON County Recorder IN
Recorded as Presented

C & I
CTIC # 406301 MJS

Cross-Reference to Recorded Instrument Nos. 200600058034 & 2008013131 (Hamilton County, Indiana)

**SECOND AMENDMENT TO
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

This Second Amendment to Declaration of Easements, Covenants and Restrictions (this "Second Amendment") is made this 15th day of September, 2008, by **PROMENADE COMMERCIAL, LLC**, an Indiana limited liability company ("Declarant") with the consent of the **OWNERS** (as defined in the Declaration) which have executed the Consents attached hereto.

RECITALS

WHEREAS, Declarant entered into that certain Declaration of Easements, Covenants and Restrictions dated August 31, 2006, which was recorded September 29, 2006, as Instrument No. 200600058034 in the Office of the Recorder of Hamilton County, Indiana, as amended by that certain First Amendment to Declaration of Easements, Covenants and Restrictions (the "First Amendment") dated March 3, 2008, and recorded March 12, 2008, as Instrument No. 2008013131 in the Office of the Recorder of Hamilton County, -Indiana (collectively, the "Declaration").

WHEREAS, Section 28 of the Declaration provides that Declarant may amend the Declaration by recording a properly executed written instrument at any time while Declarant owns any part of the Development Tract (including any entity affiliated with Declarant) provided that any amendment that materially affects the rights or obligations of any Owner, or materially affects such Owner's Parcel, requires the written approval of such Owner.

WHEREAS, Declarant owns part of the Development Tract as of the date of this Second Amendment.

I/2211094.2

WHEREAS, the undersigned Owners, which have executed the Consents attached hereto and incorporated herein by reference (collectively, the "Consenting Owners"), approve of the amendments included in this Second Amendment and have agreed to (a) waive all obligations and duties of the owner of that certain real estate more particularly described on Exhibit C, attached hereto and incorporated herein (the "Released Real Estate") to comply with the terms and conditions of the Declaration, except as expressly stated otherwise herein and (b) modify the Declaration to release and remove the Released Real Estate from the provisions and applications of the Declaration, except as expressly stated otherwise herein.

AGREEMENT

NOW, THEREFORE, Declarant, with the consent of the Consenting Owners and in accordance with the provisions of the Declaration, makes this Second Amendment and amends the Declaration in the manner hereinafter provided:

1. Recitals. The foregoing Recitals are true and correct and incorporated as if fully set forth herein.
2. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration.
3. Released Real Estate. Declarant and the Consenting Owners, hereby waive, in whole, all duties and obligations of the owner of the Released Real Estate and release and remove the Released Real Estate from the provisions and applications of the Declaration.
4. Third Recital. The third recital paragraph of the Declaration is amended and restated in its entirety and replaced with the following:

WHEREAS, the residential portion of the Master Development is planned to consist of approximately: (a) a single family residential community to be known as Promenade Woods of Noblesville (the "Woods"); and (b) a multi-family residential community to be known as Promenade Landing (the "Landing", the legal description of which is attached hereto as Exhibit D) (the Woods, the Landing, and any other portion of the Master Development on which dwellings are constructed are collectively referred to as the "Residential Tract"). While the Landing shall be a part of the Development Tract and shall be subject to this Declaration, the Woods shall not a part of the Development Tract and shall not be subject to the terms of this Declaration.

5. Exhibit A. Exhibit A to the Declaration is amended and restated in its entirety to remove the Woods tract, and is replaced with Exhibit A attached to this Second Amendment.

I/2211094.2

6. Exhibit B. Exhibit B to the Declaration is amended and restated in its entirety and replaced with Exhibit B attached to this Second Amendment.

7. Section 1(b)(iv). Section 1(b)(iv) of the Declaration is amended and restated in its entirety and replaced with the following:

(iv) The round-a-bouts shown on Exhibit "B" attached hereto; and

8. Section 3. In Section 3 of the Declaration, the parenthetical phrase "(the "PUD")" is amended and restated in its entirety and replaced with "(as amended from time to time, the "PUD")."

9. Section 5(c). Section 5(c) of the Declaration is amended and restated in its entirety and replaced with the following:

(c) No Building within the Development Tract, but not including Buildings located within the Landing, shall exceed thirty (30) feet or two (2) stories in height, measured from finished grade, without written approval from Declarant. The height of Buildings located within the Landing shall at all times comply with the restrictions provided by the PUD and any other applicable zoning regulation.

10. Section 6(a). The second paragraph of Section 6(a) of the Declaration is amended to allow any Owner in the Development Tract the right to close off the Common Areas of their respective Parcels in the manner provided by and subject to the terms of such second paragraph of Section 6(a).

11. Section 6(b)(i). Section 6(b)(i) of the Declaration is amended by replacing the term "Commercial Tract", appearing in the second and last lines of such Section, with the term "Development Tract".

12. Section 6(b)(ii). Section 6(b)(ii) of the Declaration is amended by replacing the term "Commercial Tract", appearing in the second line of such Section, with the term "Development Tract".

13. Section 6(f). Section 6(f) of the Declaration is amended and restated in its entirety and replaced with the following:

(f) Additional Rights. Declarant shall have the right to promulgate reasonable rules and regulations concerning the use by Owners and Permittees of the utilities and the Common Areas; provided, however, that such rules and regulations shall not materially interfere with any Owner's use of such Owner's Parcel. All such rules and regulations shall be in writing and shall be made reasonably available to any Owner or prospective Owner.

- 3 -

I/2211094.2

Declarant shall provide written notice to all Owners of any amendments thereto prior to any such amendments being effective against any Owner."

14. Section 6(h). In the seventh line of Section 6(h) of the Declaration, immediately following the words "over and across the roadways", the following is inserted: "; provided, however, that any easement or assignment under this Section 6(h) that encumbers the Landing Parcel shall be subject to the prior written approval of the Owner of the Landing, such approval not to be unreasonably withheld,.". In the last line of Section 6(h), following the word "applicable" the following is inserted: "; provided, however, that Declarant shall not enter into any such agreement that obligates the Owner of the Landing Parcel whatsoever without the prior written approval of such Owner, such approval not to be unreasonably withheld.".

15. Section 7(c). The term "Commercial Tract" contained in the second line of Section 7(c) of the Declaration is replaced with "Development Tract".

16. Section 7(d)(i). The introductory phrase "Except for roadway expenses addressed specifically in Section 7(d)(ii) below" is replaced with the following:

Except for Roadway Maintenance Costs addressed specifically in Section 7(d)(ii) below...

The second sentence of Section 7(d)(i) is amended so as to allow Declarant, at its election, to bill each Owner of the Commercial Tract for its prorata share of expenses either annually, quarterly or monthly.

17. Section 7(d)(ii). The first full paragraph of Section 7(d)(ii) is amended and restated in its entirety and replaced with the following:

"The Owner of the Landing, the Owner of the Tract labeled "Proposed Library Site" on the Plat Plan ("the Library Site"), and each Owner of the Commercial Tract shall pay its share of the maintenance and operation costs associated with the Master Development's roadways and right-of-ways, including directional signage, salting and snow removal (including the salting and snow removal of public rights-of-way, if performed out of necessity by Declarant), and landscaping of associated greenways (collectively, "Roadway Maintenance Costs"). Such Roadway Maintenance Costs shall be allocated as follows: (a) the Owner of the Landing shall pay annually 27% of the Roadway Maintenance Costs, not to exceed Three Thousand Dollars (\$3,000) per year; (b) the Owner of the Library Site shall pay annually 10% of the Roadway Maintenance Costs; and (c) the Owners of the Commercial Tract shall pay the Roadway Maintenance Costs less the amounts paid by the Owner of the Landing and the Owner of the Library Site. The Roadway Maintenance Costs payable by the Owners of the Commercial Tract shall be divided among the

Owners of Commercial Tract based on their proportionate share of responsibility for Common Area expenses (as determined in subpart (i) above). The cap on the Owner of the Landing's contribution to Roadway Maintenance Costs shall be increased every five (5) years by ten percent (10%) over the immediately preceding amount of the cap. Roadway Maintenance Costs shall be billed (including any adjustments) at the same time and in the same manner as other Common Area expenses as specified in subpart (i) above. If payment is not timely made by an Owner, Declarant may exercise lien or foreclosure rights as provided in Section 7(d)(i). Within thirty (30) days of any request by Owner, Declarant shall deliver all books and receipts used to calculate the Roadway Maintenance Costs for Owner's audit.

Further, the first sentence of the second paragraph of Section 7(d)(ii), as amended by Section 3(h) of the First Amendment, is further amended by inserting ", payable by the Owners of Parcels in the Commercial Tract pursuant to Section 7(d)(i)," immediately following the words "For the purpose of this Section 7(d), Common Area expenses".

18. Section 7(d)(iii). The following new Section 7(d)(iii) is added:

(iii) The Owner of the Landing shall maintain and keep in good condition and repair the ponds and the walking paths located within the Landing. Such maintenance shall be performed by the Owner of the Landing at the sole cost of the Owner of the Landing and shall not be part of the Common Area expenses.

19. Section 8(a). Section 8(a) of the Declaration is amended by replacing the words "Commercial Tract" appearing in the second line of Section 8(a) with "Development Tract". Further, following the words "and each Parcel Owner" appearing in the tenth line of Section 8(a) will be inserted "that caused the installation of landscaping blocking the Commercial Tract".

20. Section 8(b)-(g). Sections 8(b) through (g), inclusive, of the Declaration are revised so as to replace each reference to the "Commercial Tract" with the "Development Tract".

21. Section 8(f). Following the first sentence of the second paragraph of Section 8(f) of the Declaration, the following sentence is inserted: "Declarant's approval of a Zoning Change for the Landing Parcel shall not be unreasonably withheld, conditioned or delayed.". At the end of the same paragraph, the following sentence is inserted: "Notwithstanding anything in this Declaration to the contrary, Declarant shall not approve or consent to any Zoning Change for any Parcel other than the Landings to be used as a multi-family development. Such multi-family use restriction shall expressly apply to the Woods Parcel, which shall not be released from and expressly remains subject to such restriction as stated in this Section 8(f). For purposes of this Declaration, a "multi-family development" shall not include any development consisting of (i) an assisted living facility; or (ii) any "for sale" housing, including without limitation garden homes, patio homes and paired villas.

- 5 -

I/2211094.2

22. Section 8(g)(17). Section 8(g)(17) of the Declaration is deleted in its entirety and replaced with the following:

"Non-commercial club or lodge; provided, however, notwithstanding anything in this Declaration to the contrary, nothing in this Section 8(g) shall prohibit the Owner of the Landing from constructing and maintaining a common area clubhouse for residents of the Landing, which may include, but not be limited to, a pool, theater, billiard room, or other recreational amenities."

23. Section 9(a). Section 9(a) of the Declaration is deleted.

24. Section 10. Section 10 the Declaration is amended so as to replace each reference to "Commercial Tract" with "Development Tract".

25. Section 11. Section 11 of the Declaration is amended so as replace each reference to "Commercial Tract" with "Development Tract".

26. Section 14(a).The first sentence of Section 14(a) of the Declaration, as amended by Section 3(l) of the First Amendment, is amended to replace the reference to "Commercial Tract" with "Development Tract".

27. Section 15(c). Section 15(c) of the Declaration is replaced, amended and restated as follows:

- (c) Following a non-monetary default by an Owner under this Agreement, the Declarant shall be entitled to enter upon the Owner's Parcel and to cure such violation. The costs incurred by the Declarant in curing such violation shall be immediately due and payable, together with collection costs, attorney fees, and interest at eighteen percent (18%) per annum, together with the lien and foreclosure rights as provided in Section 7(d)(i) for delinquent payment of Common Area expenses.

28. Section 25. Section 25 of the Declaration is amended so as to replace each reference to "Commercial Tract" with "Development Tract". Further, the phrase ", and the initial residential builder of the Residential Tract," contained in the first and second lines of Section 25 is deleted.

29. Section 28. Section 28 of the Declaration is replaced, amended and restated as follows:

This Declaration may be amended by Declarant by recording a written instrument, executed by Declarant, at any time while Declarant owns any

part of the Development Tract (including any entity affiliated with Declarant), but no such amendment that would materially affect the rights or obligations of the Owner of the Landing Parcel shall be effective without the written approval of such Owner of the Landing Parcel. Thereafter, the Owners may amend the Declaration by recording a written instrument properly executed by the Owners of at least seventy-five percent (75%) of the gross square footage of the Buildings contained within the Commercial Tract, but no such amendment that would materially affect the rights or obligations of the Owner of the Landing Parcel shall be effective without the written approval of such Owner of the Landing Parcel. The Owner of the Landing Parcel shall receive notice of any and all amendments to the Declaration at least ten (10) days before such amendment becomes effective.

30. Section 29. Declarant's rights pursuant to Section 29 of the Declaration, as provided by Section 3(n) of the First Amendment, are hereby made expressly inapplicable to the Landing.

31. Section 30. The following new Section 30 is added:

30. Parking within the Landing. No recreational vehicle, boat, trailer, camper or motor home shall be parked in any visible location with the Landing. Declarant may enforce the provisions of this Section by towing any non-complying vehicle at the vehicle owner's sole risk and expense.

32. Section 31. The following new Section 31 is added:

31. Signs. Declarant shall erect and install two (2) pylon signs, one located near the intersection of State Road 32 and Promenade Parkway and another located just north of Promenade Shoppes Boulevard (collectively the "Signs") that identify and/or advertise the Development Tract, certain of the Owners and certain of the occupants and tenants of buildings located in the Development Tract (collectively, the "Tenants"). Except as otherwise agreed in writing by Declarant, Declarant shall have the absolute and exclusive right, in its sole discretion, to determine, designate, and dictate which Owners and Tenants from time to time may use panels on the Signs (the "Sign Users"); provided, however, that the Owner of the Landing shall be entitled to at least one (1) panel on each of the Signs. Declarant shall: (A) maintain and repair the Signs; and (B) replace, in whole or in part, the Signs when Declarant determines, in its sole discretion, that replacement is necessary or appropriate to satisfy Declarant's obligation to maintain and repair the Signs under this Declaration.

Each Sign User shall pay to Declarant within thirty (30) days after invoice date a share of the expenses that Declarant incurs in connection with operating, maintaining, repairing, replacing, and illuminating the Signs (including, without limitation, all costs and expenses of landscaping and maintaining the areas surrounding the Signs) (the "Sign Expenses"). Declarant may bill the Sign Users for the Sign Expenses monthly, quarterly or annually, at Declarant's election. The share of the Sign Expenses payable by each Sign User shall be based on the proportion of: (A) the area of that Sign User's panels; to (B) the total area of all used panels on the Signs (the "Panel Proportion"). The Sign Expenses shall be paid by the Sign Users as provided in this Section 31, and therefore shall not be included in the Common Area expenses shared by the Owners pursuant to Section 7(d) above. Within thirty (30) days of any request by an Owner, Declarant shall deliver all books and receipts used to calculate the Sign Expenses for Owner's audit.

33. Effect of Amendment. The provisions of this Second Amendment shall be covenants running with the land and shall be binding on all persons and entities from time to time having a right, title or interest in the Development Tract and the Released Real Estate or any part thereof and all persons claiming under them. Except as expressly provided in or amended by this Second Amendment, the terms and provisions of the Declaration shall remain in full force and effect. If there is a conflict between the terms of this Second Amendment and the terms of the Declaration, the terms of this Second Amendment shall govern. In the event that this Second Amendment or any term or provision provided for herein is determined to be in violation of any law, rule ordinance, regulation or similar governmental directive or otherwise determined to be invalid or ineffective, Declarant shall not be liable or responsible to the owner of the Released Real Estate as a result of such violation or invalidity and the owner of the Released Real Estate shall be prohibited from bringing any claim, action or lawsuit against Declarant as a result of such invalidity.

34. Exhibits. Each of the Exhibits attached hereto is expressly incorporated into and made part of the Declaration.

[Remainder of page intentionally left blank. Signature page(s) to follow.]

IN WITNESS WHEREOF, this Second Amendment to Declaration of Easements, Covenants and Restrictions has been executed as of the date first above written.

DECLARANT:

PROMENADE COMMERCIAL, LLC, an Indiana limited liability company

By: *Greg M. Small*
Greg M. Small, Manager

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for the County and State referenced above, personally appeared Greg M. Small, the Manager of **PROMENADE COMMERCIAL LLC**, an Indiana limited liability company, who, having been first duly sworn, acknowledged the execution of the foregoing Second Amendment of Declaration of Easements, Covenants and Restrictions on behalf of such limited liability company and stated that the representations contained therein are true.

Witness my hand and notarial seal this 15th day of September, 2008.

Sh Sk
Notary Public
[Notarial Seal]
Shannon Skates
Printed Name

I am a resident of Marion County, Indiana.
My commission expires: 4.29.2015



This instrument was prepared by April R. Schilling, Attorney at Law, Baker & Daniels LLP, 600 East 96th Street, Suite 600, Indianapolis, Indiana 46240.

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: April R. Schilling.

EXHIBIT A**Legal Description****Promenade Commercial:**

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Southwest corner of the Southwest one-quarter of said Section 34; thence North 00°24'21" East 99.23 feet along the West line of said Southwest one-quarter; thence Northeasterly 16.50 feet along a 122,676.67 foot radius curve to the left, the long chord of which bears North 89°38'27" East 16.50 feet; thence South 47°05'31" East 72.93 feet; thence Northeasterly 429.22 feet along a 122,626.67 foot radius curve to the left, the long chord of which bears North 89°30'43" East 429.22 feet; thence North 89°24'39" East 976.80 feet to a point on the Northerly right-of-way line of State Road 32; thence North 87°44'13" West 631.08 feet along said Northerly right-of-way line; thence South 89°47'07" West 587.05 feet along said Northerly right-of-way line to a point on the East right-of-way line of Little Chicago Road, the next five (5) courses being along said East right-of-way line; thence 1) North 19°44'33" West 60.56 feet; thence 2) North 08°01'10" West 243.21 feet; thence 3) North 12°40'00" West 319.83 feet; thence 4) North 03°11'06" West 290.98 feet; thence 5) North 00°09'43" West 95.27 feet; thence North 90°00'00" East 1262.37 feet; thence Northwesterly 114.76 feet along a 178.00 foot radius curve to the left, the long chord of which bears North 25°00'50" West 112.79 feet; thence North 46°30'57" East 54.00 feet; thence Southeasterly 178.83 feet along a 232.00 foot radius curve to the right, the long chord of which bears South 21°24'07" East 174.44 feet; thence South 01°56'34" West 199.30 feet; thence Southeasterly 92.91 feet along a 289.00 foot radius curve to the left, the long chord of which bears South 07°15'59" East 92.51 feet; thence South 18°18'21" West 91.73 feet; thence Southwesterly 74.01 feet along a 90.00 foot radius curve to the right, the long chord of which bears South 28°33'36" West 71.94 feet; thence South 05°00'04" West 119.47 feet; thence Southeasterly 49.85 feet along a 30.00 foot radius curve to the left, the long chord of which bears South 42°36'23" East 44.31 feet; thence North 89°47'10" East 801.58 feet; thence Southeasterly 100.31 feet along a 255.00 foot radius curve to the right, the long chord of which bears South 78°55'21" East 99.86 feet; thence South 67°37'53" East 205.60 feet; thence Southeasterly 78.98 feet along a 195.00 foot radius curve to the left, the long chord of which bears South 78°06'45" East 78.44 feet; thence South 89°44'11" East 82.96 feet to a point on the East line of said Southwest one-quarter; thence South 00°25'26" West 195.59 feet along said East line; thence South 89°24'29" West 280.50 feet; thence South 00°25'26" West 132.00 feet to a point on the South line of said Southwest one-quarter; thence South 89°24'29" West 2363.45 feet along said South line to the place of beginning. Parcel contains 41.42 acres more or less.

[Continued on Following Page]

A-1

Promenade Creek:

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest one-quarter of said Section 34; thence North 89°21'28" East 100.18 feet along the North line of said Southwest one-quarter to the TRUE PLACE OF BEGINNING; thence continuing North 89°21'28" East 664.31 feet more or less along said North line to a point in the centerline of Mill Creek, the next fifty-six (56) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) South 41°48'43" East 16.71 feet; thence 2) South 10°56'51" East 58.84 feet; thence 3) South 28°34'18" East 32.90 feet; thence 4) South 60°15'09" East 71.23 feet; thence 5) South 32°10'00" East 34.20 feet; thence 6) South 34°15'02" West 22.39 feet; thence 7) South 21°27'34" West 77.72 feet; thence 8) South 23°45'42" East 14.51 feet; thence 9) South 52°35'30" East 30.07 feet; thence 10) North 84°04'46" East 21.16 feet; thence 11) North 51°21'22" East 16.16 feet; thence 12) South 69°05'20" East 18.38 feet; thence 13) South 22°06'34" East 41.77 feet; thence 14) South 85°40'52" East 20.20 feet; thence 15) North 42°22'28" East 45.69 feet; thence 16) South 48°17'43" East 25.56 feet; thence 17) South 10°56'14" East 49.00 feet; thence 18) South 29°39'17" East 35.84 feet; thence 19) South 72°29'42" East 46.39 feet; thence 20) North 65°34'06" East 32.61 feet; thence 21) North 01°15'52" East 57.71 feet; thence 22) North 16°25'36" East 41.04 feet; thence 23) North 67°01'03" West 52.77 feet; thence 24) North 09°28'04" West 19.84 feet; thence 25) North 47°44'34" East 16.97 feet; thence 26) South 88°54'34" East 34.27 feet; thence 27) South 67°14'55" East 93.64 feet; thence 28) South 39°41'29" East 54.73 feet; thence 29) South 04°52'27" East 39.98 feet; thence 30) South 71°30'54" West 48.64 feet; thence 31) South 08°32'45" East 38.34 feet; thence 32) South 66°28'19" East 27.23 feet; thence 33) North 61°19'47" East 49.14 feet; thence 34) South 52°28'03" East 38.90 feet; thence 35) South 09°34'22" East 120.18 feet; thence 36) South 29°29'19" East 32.11 feet; thence 37) South 54°50'15" East 47.55 feet; thence 38) South 20°59'18" East 55.08 feet; thence 39) South 32°21'34" East 89.68 feet; thence 40) South 08°26'59" West 52.21 feet; thence 41) South 31°09'45" East 24.24 feet; thence 42) South 10°39'27" East 22.25 feet; thence 43) South 33°03'47" East 25.43 feet; thence 44) South 72°38'05" East 40.72 feet; thence 45) South 23°18'07" East 17.64 feet; thence 46) South 09°48'15" West 23.95 feet; thence 47) South 26°07'53" East 37.99 feet; thence 48) South 50°34'20" East 29.25 feet; thence 49) South 25°04'00" East 30.82 feet; thence 50) South 66°59'32" East 63.80 feet; thence 51) South 21°28'29" East 54.13 feet; thence 52) South 10°15'25" East 49.76 feet; thence 53) South

[Continued on Following Page]

53°29'13" East 20.75 feet; thence 54) North 66°37'12" East 59.75 feet; thence 55) North 55°01'00" East 25.79 feet; thence 56) South 62°56'44" East 62.51 feet; thence 57) North 87°19'44" East 28.73 feet; thence South 50°25'05" West 457.29 feet; thence South 26°54'07" West 164.91 feet; thence Northwesterly 79.19 feet along a 232.00 foot radius curve to the left, the long chord of which bears North 33°42'22" West 78.80 feet; thence South 46°30'57" West 54.00 feet; thence Southeasterly 114.76 feet along a 178.00 foot radius curve to the right, the long chord of which bears South 25°00'50" East 112.79 feet; thence North 90°00'00" West 1262.37 feet to a point on the East right-of-way line of Little Chicago Road, the next five (5) courses being along said East right-of-way line; thence 1) North 00°09'43" West 311.99 feet; thence 2) North 01°10'00" West 189.04 feet; thence 3) North 01°52'24" East 200.08 feet; thence 4) North 00°16'37" East 700.00 feet; thence 5) North 01°10'44" West 196.01 feet to the place of beginning. Parcel contains 45.87 acres more or less

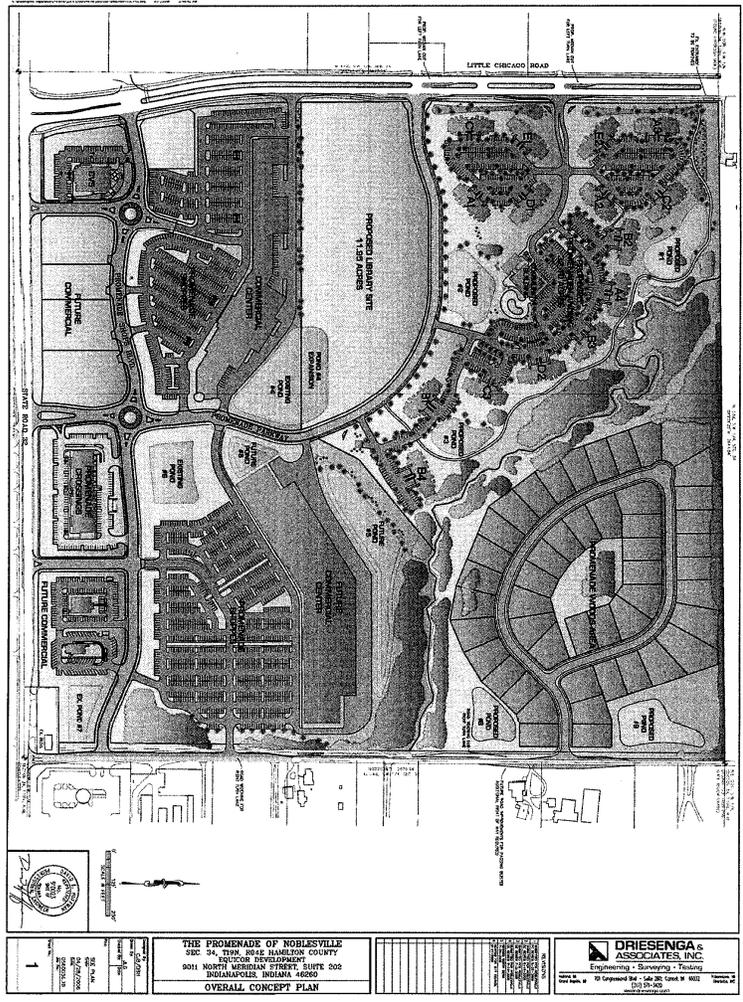
Promenade Villas:

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

COMMENCING at the Southeast corner of the Southwest one-quarter of said Section 34; thence North 00°25'26" East 327.59 feet along the East line of said Southwest one-quarter to the TRUE PLACE OF BEGINNING; thence North 89°44'11" West 82.96 feet; thence Northwesterly 78.98 feet along a 195.00 foot radius curve to the right, the long chord of which bears North 78°06'45" West 78.44 feet; thence North 67°37'53" West 205.60 feet; thence Northwesterly 100.51 feet along a 255.00 foot radius curve to the left, the long chord of which bears North 78°55'21" West 99.86 feet; thence South 89°47'10" West 801.58 feet; thence Northwesterly 49.85 feet along a 30.00 foot radius curve to the right, the long chord of which bears North 42°36'23" West 44.31 feet; thence North 05°00'04" East 119.47 feet; thence Northeasterly 74.01 feet along a 90.00 foot radius curve to the right, the long chord of which bears North 28°33'36" East 71.94 feet; thence North 18°18'21" East 91.73 feet; thence Northwesterly 92.91 feet along a 289.00 foot radius curve to the right, the long chord of which bears North 07°15'59" West 92.51 feet; thence North 01°56'34" East 199.30 feet; thence Northwesterly 99.64 feet along a 232.00 foot radius curve to the left, the long chord of which bears North 11°37'26" West 98.88 feet; thence North 26°54'07" East 164.91 feet; thence North 50°25'05" East 457.29 feet to a point in the centerline of Mill Creek, the next fifteen (15) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) South 58°28'51" East 48.75 feet; thence 2) North 83°08'49" East 34.32 feet; thence 3) North 45°58'34" East 37.87 feet; thence 4) South 78°59'07" East 58.66 feet; thence 5) North 73°34'07" East 27.43 feet; thence 6) South 43°10'54" East 46.44 feet; thence 7) North 75°15'17" East 64.31 feet; thence 8) South 85°16'02" East 161.13 feet; thence 9) North 83°29'06" East 54.49 feet; thence 10) North 73°07'33" East 57.91 feet; thence 11) South 82°34'05" East 26.80 feet; thence 12) South 45°00'59" East 35.67 feet; thence 13) South 63°40'23" East 49.08 feet; thence 14) South 87°00'01" East 66.16 feet; thence 15) South 59°52'36" East 114.73 feet; thence South 00°25'26" West 1121.38 feet along the East line of said Southwest one-quarter to the place of beginning. Parcel contains 30.27 acres more or less.

Exhibit B

[Plot Plan]



I/2211094.2

B-1

EXHIBIT CPromenade Woods:

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the Northeast corner of the Southwest one-quarter of said Section 34; thence South 00°25'26" West 1231.01 feet more or less along the East line of said Southwest one-quarter to a point in the centerline of Mill Creek, the next seventy-one (71) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) North 59°52'36" West 114.73 feet; thence 2) North 87°00'01" West 66.16 feet; thence 3) North 63°40'23" West 49.08 feet; thence 4) North 45°00'59" West 35.67 feet; thence 5) North 82°34'05" West 26.80 feet; thence 6) South 73°07'33" West 57.91 feet; thence 7) South 83°29'06" West 54.49 feet; thence 8) North 85°16'02" West 161.13 feet; thence 9) South 75°15'17" West 64.31 feet; thence 10) North 43°10'54" West 46.44 feet; thence 11) South 73°34'07" West 27.43 feet; thence 12) North 78°59'07" West 58.66 feet; thence 13) South 45°58'34" West 37.87 feet; thence 14) South 83°08'49" West 34.32 feet; thence 15) North 58°28'51" West 48.75 feet; thence 16) South 87°19'44" West 28.73 feet; thence 17) North 62°56'44" West 62.51 feet; thence 18) South 55°01'00" West 25.79 feet; thence 19) South 66°37'12" West 59.75 feet; thence 20) North 53°29'13" West 20.75 feet; thence 21) North 10°15'25" West 49.76 feet; thence 22) North 21°28'29" West 54.13 feet; thence 23) North 66°59'32" West 63.80 feet; thence 24) North 25°04'00" West 30.82 feet; thence 25) North 50°34'20" West 29.25 feet; thence 26) North 26°07'53" West 37.99 feet; thence 27) North 09°48'15" East 23.95 feet; thence 28) North 23°18'07" West 17.64 feet; thence 29) North 72°38'05" West 40.72 feet; thence 30) North 33°03'47" West 25.43 feet; thence 31) North 10°39'27" West 22.25 feet; thence 32) North 31°09'45" West 24.24 feet; thence 33) North 08°26'59" East 52.21 feet; thence 34) North 32°21'34" West 89.68 feet; thence 35) North 20°59'18" West 55.08 feet; thence 36) North 54°50'15" West 47.55 feet; thence 37) North 29°29'19" West 32.11 feet; thence 38) North 09°34'22" West 120.18 feet; thence 39) North 52°28'03" West 38.90 feet; thence 40) South 61°19'47" West 49.14 feet; thence 41) North 66°28'19" West 27.23 feet; thence 42) North 08°32'45" West 38.34 feet; thence 43) North 71°30'54" East 48.64 feet; thence 44) North 04°52'27" West 39.98 feet; thence 45) North 39°41'29" West 54.73 feet; thence 46) North 67°14'55" West 93.64 feet; thence 47) North 88°54'34" West 34.27 feet; thence 48) South 47°44'34" West 16.97 feet; thence 49) South 09°28'04" East 19.84 feet; thence 50) South 67°01'03" East 52.77 feet; thence 51) South 16°25'36" West 41.04 feet; thence 52) South 01°15'52" West 57.71 feet; thence 53) South 65°34'06" West 32.61 feet; thence 54) North 72°29'42" West 46.39 feet; thence 55) North

C-1

29°39'17" West 35.84 feet; thence 56) North 10°56'14" West 49.00 feet; thence 57) North 48°17'43" West 25.56 feet; thence 58) South 42°22'28" West 45.69 feet; thence 59) North 85°40'52" West 20.20 feet; thence 60) North 22°06'34" West 41.77 feet; thence 61) North 69°05'20" West 18.38 feet; thence 62) South 51°21'22" West 16.16 feet; thence 63) South 84°04'46" West 21.16 feet; thence 64) North 52°35'30" West 30.07 feet; thence 65) North 23°45'42" West 14.51 feet; thence 66) North 21°27'34" East 77.72 feet; thence 67) North 34°15'02" East 22.39 feet; thence 68) North 32°10'00" West 34.20 feet; thence 69) North 60°15'09" West 71.23 feet; thence 70) North 28°34'18" West 32.90 feet; thence 71) North 10°56'51" West 58.84 feet; thence 72) North 41°48'43" West 16.71 feet; thence North 89°21'28" East 1880.35 feet along the North line of said Southwest one-quarter to the place of beginning. Parcel contains 35.69 acres more or less.

C-2

Exhibit D**Legal Description of the Landing**

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest one-quarter of said Section 34; thence North 89°21'28" East 100.18 feet along the North line of said Southwest one-quarter to the TRUE PLACE OF BEGINNING; thence continuing North 89°21'28" East 664.31 feet more or less along said North line to a point in the centerline of Mill Creek, the next fifty-seven (57) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) South 41°48'43" East 16.71 feet; thence 2) South 10°56'51" East 58.84 feet; thence 3) South 28°34'18" East 32.90 feet; thence 4) South 60°15'09" East 71.23 feet; thence 5) South 32°10'00" East 34.20 feet; thence 6) South 34°15'02" West 22.39 feet; thence 7) South 21°27'34" West 77.72 feet; thence 8) South 23°45'42" East 14.51 feet; thence 9) South 52°35'30" East 30.07 feet; thence 10) North 84°04'46" East 21.16 feet; thence 11) North 51°21'22" East 16.16 feet; thence 12) South 69°05'20" East 18.38 feet; thence 13) South 22°06'34" East 41.77 feet; thence 14) South 85°40'52" East 20.20 feet; thence 15) North 42°22'28" East 45.69 feet; thence 16) South 48°17'43" East 25.56 feet; thence 17) South 10°56'14" East 49.00 feet; thence 18) South 29°39'17" East 35.84 feet; thence 19) South 72°29'42" East 46.39 feet; thence 20) North 65°34'06" East 32.61 feet; thence 21) North 01°15'52" East 57.71 feet; thence 22) North 16°25'36" East 41.04 feet; thence 23) North 67°01'03" West 52.77 feet; thence 24) North 09°28'04" West 19.84 feet; thence 25) North 47°44'34" East 16.97 feet; thence 26) South 88°54'34" East 34.27 feet; thence 27) South 67°14'55" East 93.64 feet; thence 28) South 39°41'29" East 54.73 feet; thence 29) South 04°52'27" East 39.98 feet; thence 30) South 71°30'54" West 48.64 feet; thence 31) South 08°32'45" East 38.34 feet; thence 32) South 66°28'19" East 27.23 feet; thence 33) North 61°19'47" East 49.14 feet; thence 34) South 52°28'03" East 38.90 feet; thence 35) South 09°34'22" East 120.18 feet; thence 36) South 29°29'19" East 32.11 feet; thence 37) South 54°50'15" East 47.55 feet; thence 38) South 20°59'18" East 55.08 feet; thence 39) South 32°21'34" East 89.68 feet; thence 40) South 08°26'59" West 52.21 feet; thence 41) South 31°09'45" East 24.24 feet; thence 42) South 10°39'27" East 22.25 feet; thence 43) South 33°03'47" East 25.43 feet; thence 44) South 72°38'05" East 40.72 feet; thence 45) South 23°18'07" East 17.64 feet; thence 46) South 09°48'15" West 23.95 feet; thence 47) South 26°07'53" East 37.99 feet; thence 48) South 50°34'20" East 29.25 feet; thence 49) South 25°04'00" East 30.82 feet; thence 50) South 66°59'32" East 63.80 feet; thence 51) South 21°28'29" East 54.13 feet; thence 52) South 10°15'25" East 49.76 feet; thence 53) South 53°29'13" East 20.75 feet; thence 54) North 66°37'12" East 59.75 feet; thence 55) North 55°01'00" East 25.79 feet; thence 56) South 62°56'44" East 62.51 feet; thence 57) North 87°19'44" East 28.73 feet; thence South 50°25'05" West 457.29 feet; thence South 26°54'07" West 174.17 feet; thence North 21°54'23" West 104.75 feet; thence Northwesterly 713.07 feet along a 600.00 foot radius curve to the left, the long chord of which bears North 55°57'12" West 671.84 feet; thence North 90°00'00" West 279.13 feet; thence Southwesterly 107.25 feet along a 327.00 foot radius curve to the left, the long chord of which bears South 80°36'14" West 106.77 feet; thence South 71°12'29" West 106.41 feet; thence Southwesterly 75.42 feet along a 323.00 foot radius curve to the right, the long chord of which bears South 77°53'49" West 75.24 feet; thence North 86°47'55" West 105.89 feet; thence North 57°58'51" West 44.66 feet to a point on the East right-of-way line of Little Chicago Road, the next three (3) courses being along said East right-of-way line; thence 1) North 01°52'24" East 200.08 feet; thence 2) North 00°16'37" East 700.00 feet; thence 3) North 01°10'44" West 196.01 feet to the place of beginning. Area contains 32.10 acres more or less.

D-1

I/2211094.2

CONSENT OF MORTGAGEE

The undersigned, as an authorized representative of National City Bank, a national banking association, being the holder of (i) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling, granted by the above defined Declarant as of August 31, 2006, and recorded as Instrument No. 200600058035, as amended by that certain First Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling dated August 1, 2008, and recorded as Instrument No. 2008042206, both in the Office of the Recorder of Hamilton County, Indiana; (ii) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling, granted by Promenade Woods, LLC as of August 31, 2006, and recorded as Instrument No. 200600058037, as amended by that certain First Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling dated August 1, 2008, and recorded as Instrument No. 2008042203, both in the Office of the Recorder of Hamilton County, Indiana; (iii) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling, granted by Promenade Creek, LLC as of August 31, 2006, and recorded as Instrument No. 200600058039, as amended by that certain First Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling dated August 1, 2008, and recorded as Instrument No. 2008042205, both in the Office of the Recorder of Hamilton County, Indiana; and (iv) that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling, granted by Promenade Villas, LLC as of August 31, 2006, and recorded as Instrument No. 200600058041, as amended by that certain First Amendment to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filling dated August 1, 2008, and recorded as Instrument No. 2008042204, both in the Office of the Recorder of Hamilton County, Indiana (together, the "Mortgages"), with respect to the above referenced Development Tract, hereby consents to the execution and recording of the above Second Amendment to Declaration of Easements, Covenants and Restrictions, including, without limitation, the terms and provisions thereof which waive, in whole, all duties and obligations of the owner of the Released Real Estate (as defined in the Second Amendment) and release and remove the Released Real Estate from the provisions and applications of the Declaration. The undersigned further agrees that the Mortgages shall be subordinate and subject to the provisions of the above Second Amendment to Declaration of Easements, Covenants and Restrictions and Exhibits attached thereto and the documents incorporated therein; provided, however, except and to the extent that the Mortgages are subordinated by this Consent, such Mortgages shall remain in full force and effect.

[Remainder of this page is intentionally left blank. Signature page to follow.]

I/2211094.2

EXECUTED this 15th day of September, 2008.

NATIONAL CITY BANK

By: [Signature]
Printed Name: John J. Tullen
Title: Senior Vice President

STATE OF INDIANA)
)
) SS:
COUNTY OF Marion)

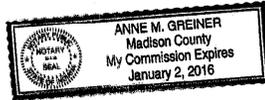
Before me, a Notary Public in and for said County and State, personally appeared John J. Tullen, the SVP of National City Bank, who acknowledged the execution of the foregoing "Consent of Mortgagee" for and on behalf of said entity.

WITNESS my hand and Notarial Seal this 15th day of September, 2008.

[Signature]
Notary Public
Anne M. Greiner
(Printed Signature)

My Commission Expires: 01-02-2016

My County of Residence: Madison



I/2211094.2

72w
31
10/10/14

2014046016 DECL \$73.00
10/10/2014 04:02:35P 31 PGS
Mary L. Clark
HAMILTON County Recorder IN
Recorded as Presented

CROSS-REFERENCE: The Secondary Plat of Promenade Woods, Section 1, recorded October 10, 2014, as Instrument No. 2014046015 in the Office of the Recorder of Hamilton County, Indiana.

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
PROMENADE WOODS**

THIS DECLARATION, made as of the 10 day of October, 2014, by **BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership** (“**Declarant**”).

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in **Exhibit “A”** (hereafter “**Property**”) attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

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

NOW, THEREFORE, the Declarant hereby declares that the Property (including without limitation each Lot) (as defined in Article II below) situated therein shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, subject to the following restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property, and which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof. The restrictions shall inure to the benefit of the Declarant and its respective successors in title to the Property or any part or parts thereof.

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

Declarant shall have, and hereby reserves the right, at any time, and from time to time, at any time prior to the expiration of the Development Period (as hereinafter defined), to add to the Property and subject to this Declaration any contiguous real estate owned by Declarant (the “**Additional Property**”). Any Additional Property added to the Property shall become a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in of the County in which the Property is located, an instrument so declaring the same to be part of

the Property, which supplementary declaration (hereafter “**Supplementary Declaration**”) shall be by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments applicable to the Additional Property and/or the Dwelling Units constructed thereon as may be necessary to reflect the different character, if any, of the added Dwelling Units or Additional Property so long as the rights and obligations of the original Lot Owners are not materially altered.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant’s right and option to add and expand the Property as to any part or parts of any Additional Property, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other Additional Property, and such right and option of expansion may be exercised by Declarant from time to time so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Property.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as Promenade Woods (hereafter “**Subdivision**”).

ARTICLE II

Definitions

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

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

Section 2.2 “**Association**” means the **PROMENADE WOODS HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and assigns.

Section 2.3 “**Board**” or “**Board of Directors**” means the Board of Directors of the Association.

Section 2.4 “**Builder**” means a person or entity engaged in and responsible for the original construction of a Dwelling Unit (as hereafter defined) on a Lot.

Section 2.5 “**City**” means the City of Noblesville, Hamilton County, Indiana.

Section 2.6 “**Common Area**” means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so

expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", "C.A.", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.7 "**Common Expenses**" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, including, but not limited to the obligations under that certain Stormwater Management Practice-Maintenance Agreement dated August 12, 2014, and recorded on August 27, 2014, in the Office of the Recorder of Hamilton County, Indiana (the "**Records**") as Instrument No. 2014037860, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.8 "**Declarant**" means the *BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership*, and its successors and assigns.

Section 2.9 "**Development Period**" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. If the Development Period has lapsed, the Development Period shall recommence at such time as the Declarant subjects any part (or all) of the Additional Property to this Declaration as set forth herein.

Section 2.10 "**Dwelling Unit**" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.11 "**Lake Area(s)**" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.12 "**Lot**" or "**Lots**" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed one (1) single detached Dwelling Unit. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.13 "**Owner**" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant. For purposes of the calculation of any approval or consent requiring a percentage of Owners of Lots herein, including, but not limited to, the percentage of Owners required to approve any amendment under Section 10.4, an Owner shall (i) include Declarant; and (ii) be entitled to one (1) vote for each Lot owned at the time of the calculation (i.e., if there are one hundred (100) Lots and Declarant owns seventy-five (75) Lots then Declarant's approval of any matter would be counted as seventy-five percent (75%) of the Owners of Lots for purposes of such calculation).

Section 2.14 "**Plat**" means the subdivision plat of the Property which was recorded in the Records on October __, 2014, as Instrument No. 2014046015, as the same may be hereafter amended or supplemented pursuant to this Declaration.

ARTICLE III

Property Rights, Easements and Encroachments

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

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid; and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association; and

(h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision;

(j) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of

the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

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

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement. The following rights and easements reserved in this Section 3.4 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 3.4 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

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

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("**Lake Easement**") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or

lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

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

(d) Pursuant to the conceptual goal established as part of the Preliminary Development Plan in the PUD (as hereafter defined), Declarant reserves unto itself during the Development Period, and thereafter unto the Association, a woodland preservation easement (“**Woodland Preservation Easement**”) on and over all of the Common Area identified on the Plat as Common Areas A, B, and D, and generally depicted on the Preliminary Development Plan exhibit of the PUD, the applicable portion of such plan is attached hereto as **Exhibit B** and incorporated herein by reference, within which trees are not to be removed unless certain conditions exist. In addition, since the growth of trees is strongly encouraged in the Subdivision, no Owner shall be permitted to remove a tree greater than three inches (3”) in diameter upon his or her Lot unless it is diseased or dead. For trees that are not diseased or dead, the Owner must seek the prior approval of the Architectural Control Committee for permission to remove a tree. The Architectural Control Committee may consider whatever factors it deems appropriate, such as the Owner’s desire to make improvements on his or her Lot or whether tree removal would improve drainage.

(e) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, a ten foot (10’) easement (“**Common Area Easement**”) along the eastern property line of Lot 15 in the Subdivision to provide access the amenities located in the Common Area identified on the Plat as Common Area A.

(f) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Utility, and Sewer Easement, Lake Easement, Sign and Facilities Easement, Woodland Preservation Easement, or Common Area Easement located on the Property, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Utility, and Sewer Easement, Lake Easement, Sign and Facilities Easement, Woodland Preservation Easement, Common Area Easement, or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder the County in which the Property is located.

(g) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

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

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

Section 3.7 Designated Drainage, Utilities, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "**DU&E Easements**"), which are hereby reserved to the appropriate governmental entities, public utilities and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, and detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements except by Declarant and its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of Declarant and their engineers and agents from all liability as to property damage resulting therefrom caused by storm water or storm drainage.

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

Declarant reserves unto itself during the Development Period, and thereafter to the Association, a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. The Association shall give reasonable notice of its intention to take such action to all affected Owners, unless, in the opinion of the Association, an emergency exists which precludes such notice.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage.

Landscaping Easements designated on the Plat are created for the use by Declarant, the Architectural Control Committee, and the Association at their election, for the construction, planting and maintenance of trees, shrubs, plantings, sign structures and walk, and other decorative structures. The landscaping and other structures located within the easement may be maintained by the Association, and the Association shall have an easement of ingress and egress on and over such area for the purpose of maintenance. The landscaping and other improvements planted or installed by Declarant and/or the Association in this area may not be removed by an Owner, and no fence shall be placed in such area by an Owner, except as approved by the Association. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected within the area of any such easements located adjacent to any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

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

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

Section 3.11 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.12 Reservation of Right to Grant Easement. Prior to the expiration of the Development Period, Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

Section 3.13 Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways and walkways provided prior arrangements are made with the utility company or public agency furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossings, driveways and walkways, and neither Declarant nor any utility company or public agency using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers, driveways, or other improvements of the Owner located on the land covered by said easements.

ARTICLE IV

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

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the “**Initial Member(s)**”). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

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

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier (hereafter the “**Applicable Date**”):

- (i) When the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; provided, however, that if the Class B membership has previously lapsed, the Class B membership shall recommence in the event that the Declarant subsequently subjects any Additional Property to this Declaration and, by virtue thereof, total number of votes outstanding in the Class A membership is no longer equal to or greater than the total number of votes that would be outstanding in the Class B membership; or
- (ii) The date on which the Class B members agree in writing to the cessation and conversion of the Class B membership.

Section 4.3 Board of Directors. The Board of Directors of the Association shall be appointed and/or elected as prescribed by the Association’s Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. At all times, the Association shall engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

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

ARTICLE V

Covenant for Maintenance Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses);
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration;
- (c) One Time Assessment for purposes specified below; and
- (d) Lot Maintenance Assessment, if applicable.

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

Notwithstanding anything to the contrary contained herein, in the event the members present at the meeting to approve the annual budget for the ensuing year for the Association do not constitute a quorum, the Board of Directors may adopt an annual budget, which shall be the basis for the aforementioned assessments, provided the amount of the budget is not in excess of one hundred ten percent (110%) of the amount of the last approved annual budget for the Association. Notwithstanding the foregoing or anything to the contrary contained herein, the Board of Directors shall not enter into any contract that would result in a new assessment or the increase in an existing assessment payable by the members of the Association in the amount of more than Five Hundred Dollars (\$500.00) per year for each affected member of the Association unless the Board follows the applicable notice and voting procedures established by Ind. Code § 32-25.5-3-4.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in

a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be Nine Hundred Seventy-Five Dollars (\$975.00) per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership. In addition, upon the employment and engagement by the Association of a professional manager or management company to assist the Board of Directors in the management and administration of the Association, there shall immediately and automatically, without notice or vote of membership, be added to the Regular Yearly Assessment, the cost of such professional management.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, by a majority vote of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) Except as otherwise provided herein, the Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of a majority of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 One-time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Three Hundred Fifty Dollars (\$350.00), which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board of Directors.

Section 5.6 Lot Maintenance Assessment. Pursuant to Article 11 below, if an Owner elects the option of the Association providing Optional Lot Services (as defined herein), said Owner shall owe the Association the applicable Lot Maintenance Assessment which is in addition to any of the other assessments described in this Article 5.

Section 5.7 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than

sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members entitled to cast fifty percent (50%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. For the purposes of this meeting, a member is considered to be present at the meeting if the member attends: (i) in person, (ii) by proxy, (iii) by voting through a secure website or equivalent, or (iv) by any other means allowed under Indiana law or under this Declaration or the governing documents of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.8 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots; provided, however, that the foregoing notwithstanding, (i) with respect to any vacant or unimproved Lots, no assessments shall be due or accrue, and (ii) with respect to any Lots held by Builder or Declarant, no assessments shall be due until such time as a Dwelling Unit is fully constructed on such Lot and is actually sold to a third party consumer.

Section 5.9 Date of Commencement of Regular Yearly Assessments; Due Dates. Subject to the limitations contained herein, the Regular Yearly Assessment provided for herein shall commence as to each Lot upon the initial transfer of such Lot by Declarant to an Owner. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.10 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot. Furthermore, upon the failure of an Owner to make payments of any assessment within thirty (30) days after the due date, the Board, in its discretion, may (i) suspend such Owner's right to use the Common Area within the Subdivision; (ii) suspend such Owner's right to vote if the Owner is more than six (6) months delinquent; and (iii) suspend the provision of any Optional Lot Services which the Owner had previously requested by provided by the Association.

Section 5.11 Subordination of the Lien to Mortgages; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

ARTICLE VI

Use, Restrictions, and Architectural Control

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

Section 6.2 Architectural Control. No building, outbuilding, mailbox, fence, deck, patio, porch, privacy screening, built-in outdoor fire pit or fireplace, built-in outdoor kitchen or grilling areas, pergola, landscaping, satellite dish larger than 18 inches, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Control Committee. Any change in the appearance or the color of any part of the exterior of a Dwelling Unit shall be deemed a change thereto and shall require the approval therefor as above provided. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

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

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

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

Section 6.3 Leasing. Any Lot may be leased by its Owner; provided, however, (i) any lease must have a minimum term of six (6) months and contain a covenant that lessee agrees to be bound by the terms and conditions of this Declaration, and (ii) written notice of such lease must be provided by the Owner to the Association within ten (10) days of the full execution of such lease.

Section 6.4 Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property.

Section 6.5 Outside Storage. All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring Dwelling Units and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers, and any such container or garbage can left outside on any day other than collection shall be kept behind a screen.

Section 6.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Board of Directors and/or Architectural Control Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of this Declaration.

Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance.

Section 6.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no Dwelling Unit shall exceed one and one-half (1-½) stories (plus an optional basement) or thirty-five (35) feet in height as determined by the applicable zoning ordinance.

Section 6.14 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.15 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.16 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.17 Vehicles and Parking. Only normal passenger vehicles are permitted to be parked within the Property. Normal passenger vehicles include automobiles, vans, motorcycles, mini-bikes, sport utility vehicles, and trucks with a maximum load capacity of one ton or less. Boats or other watercraft, campers, recreational vehicles (RVs), trailers of any kind, temporary storage units, dumpsters, buses, mobile homes, commercial or business trucks or vans, semi-tractor trucks, semi-trucks, semi-

tractor trailers, disabled vehicles, or any other vehicles other than normal passenger vehicles shall not be permitted to be parked or stored anywhere within the Property, unless they are:

- (a) necessary and incident to the Declarant's, Builder's or Association's business on the Property;
- (b) parked or stored completely enclosed within the Owner's garage;
- (c) parked or stored upon the Owner's Lot for no more than two (2) weeks per year total; or
- (d) the Owner receives the Board of Directors' approval upon a showing of extenuating circumstances. The Board's approval may include such conditions as deemed appropriate by the Board of Directors.

Commercial vehicles are vehicles, regardless of size, on which equipment is visible and is being used for commercial purposes. No junk or disabled vehicle or other vehicle on which current registration plates are not displayed shall be kept in the Property, except as may be completely enclosed within a garage.

Section 6.18 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) square feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.19 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights reserved unto Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Any shoreline plantings that may be installed around the Lake/Lake area are for the express purpose of: (1) providing an aesthetically pleasing and seasonally changing landscaped edge; (2) Providing containment of waterfowl to the water surface; (3) Buffering wave action to eliminate shoreline erosion; (4) Improving water quality by filtering surface water runoff; and (4) Reducing mosquito populations by increasing mosquito predator habitat. Mowing, spraying, trimming, or growth inhabiting activities in or around the shoreline planning are expressly prohibited.

Section 6.20 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become

effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.21 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.22 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Above ground swimming pools are prohibited on the Property.

Section 6.23 Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors and/or the Architectural Control Committee.

Section 6.24 Notice of Zoning Commitments and Amendments to Zoning Ordinances. Notice is hereby given that certain amendments to the zoning ordinance were made in connection with the zoning of the Property and adjacent land pursuant to (a) Ordinance No. 4-1-06 recorded on March 28, 2006, as Instrument No. 200600016340 in the Records; (b) Ordinance No. 5-1-06 recorded on March 28, 2006, as Instrument No. 200600016341 in the Records; (c) Ordinance No. 6-1-06 recorded on March 28, 2006, as Instrument No. 200600016342 in the Records; (d) Ordinance No. 31-6-08 recorded on August 21, 2008, as Instrument No. 2008042895 in the Records; and (e) Ordinance No. 32-6-08 recorded on August 21, 2008, as Instrument No. 2008042896 in the Records (collectively, the "PUD"). The PUD is incorporated by reference, and each Owner by its acceptance of a deed to any Lot acknowledges that the foregoing shall burden the Property and agrees to be bound thereby. To the extent there is any conflict between (i) the restrictions in this Declaration and the restrictions in the PUD, the PUD shall control; and (ii) the foregoing ordinances, the most recent ordinance shall control.

Section 6.25 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- (a) Any home occupation must be conducted entirely within the Dwelling Unit and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- (c) There can be no sign or display that will indicate from the exterior

of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;

- (d) No commodity can be sold from the Lot or Dwelling Unit located thereon.
- (e) No person can be employed other than a member of the immediate family residing in the Dwelling Unit;
- (f) No manufacturer or assembly operations can be conducted; and
- (g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

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

Section 6.26 Fences. No fencing, landscape screening, or walls may be constructed or installed until after architectural approval is obtained from the Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Non-professionally installed fences may be inspected by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. In general, fences shall be erected within six inches (6") the property line of such Lot unless otherwise approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Generally, fences shall not be higher than four feet (4') from ground level.

All fencing must be wrought iron, its aluminum equivalent or like material. No fence shall be constructed until its materials, design, and location are first approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing. All approvals of landscape screening materials, design, and location shall be on an individual basis. No fence shall be constructed within a drainage easement so as to obstruct the flow of water therein.

In instances where privacy screening is necessary or desirable, exceptions to the above material or height restrictions may be approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee on a case by case basis. Opaque privacy screens up to six feet (6') in height shall be permitted around patio areas so long as they do not extend more than seventeen feet (17') from the back of the Dwelling Unit. For such privacy screens, the use of materials that will not fade or warp (such as vinyl or composite material) is encouraged, but the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee may approve the use of wood material for a privacy screen so long as the Owner treats the wood every two years as necessary to maintain an attractive appearance.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Declarant, during the Development Period, and thereafter to the Board of Directors and/or the Architectural Control Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

Section 6.27 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are to be connected to the Dwelling Unit cannot be constructed until after they are approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.28 Mini Barns and Outbuildings. No mini barn, outbuilding, or other structure which is detached from a Dwelling Unit shall be constructed on any Lot.

Section 6.29 Playground/Recreational Equipment. No playground or recreational equipment, including, but not limited to a trampoline and basketball goal, shall be placed or constructed upon a Lot.

Section 6.30 Address Identification. The numbers representing the address of each Lot will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Architectural Control Committee.

Section 6.31 Dusk-to-Dawn Lighting. All Dwelling Units will have dusk to dawn lights that operate on a photo cell located on the sides of the garage doors. Dwelling Units with a two (2) car garage shall have two (2) dusk to dawn lights, and Dwelling Units with a three (3) car garage shall have three (3) dusk to dawn lights. In the interests of safety and aesthetics of the neighborhood, the Owner of each Lot shall maintain the appearance and working condition of their garage lights. Such lights must be illuminated during nighttime hours (i.e., immediately following dusk and preceding dawn).

Section 6.32 Driveways. All driveways shall be concrete in material unless otherwise approved by the Architectural Control Committee. All driveways, including location and materials, shall be subject to any design guidelines and the advance written approval of the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.33 Water Systems. Each Owner shall connect to the water main maintained by a public water utility to provide water for domestic use on the Lot and shall pay all connection, availability, or other charges lawfully established with respect to connections thereto.

Section 6.34 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom would not blow upon any other Lot. Owners shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 6.35 Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their

Lots; or (c) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or the rules and regulations of the Association, or (d) it is a satellite dish one (1) meter (approximately 39") or less in diameter and not affixed to the roof of a Dwelling Unit; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

Section 6.36 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 6.37 Electric Bug Killers. Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 6.38 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no awnings or patio covers will be permitted anywhere on the Property unless approved in advance by the Architectural Control Committee. All approved awnings and patio covers must be kept in good repair and attractive in appearance.

Section 6.39 Diligence in Construction. Subject to inclement weather or other Acts of God, every Dwelling Unit shall be completed within twelve (12) months after the beginning of such construction or placement. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be allowed to remain in such state for no more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming, and following such time, the structure or building shall be rebuilt and restored to its previous condition, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.40 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of a Dwelling Unit.

Section 6.41 Clothesline. No clothesline may be erected on any Lot unless approved in writing by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.42 Swimming Pools and Hot Tubs. Except for children's unfiltered splash pools, no above-ground swimming pools shall be permitted in the Property, even if they are inflatable. Only permanent, in-ground pools with professional construction, approved in writing in advance by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee, shall be permitted upon a Lot. All submittals to the Declarant or the Board of Directors and/or the Architectural Control Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to the Declarant or the Board of Directors and/or the Architectural Control Committee approvals. All approved in-ground swimming pools must have an electrically powered, locking safety cover and/or an enclosure fence of at least five feet (5') in height that complies with the Section above specifically concerning fences and shall be subject to any design guidelines and the advance written approval of the Declarant or the Board of Directors and/or the Architectural Control Committee. All equipment rooms, bath houses, or dressing rooms that are not part of the original construction of the Dwelling Unit shall be subject to any

design guidelines and the advance written approval of the Declarant or the Board of Directors and/or the Architectural Control Committee. Hot tubs must also be approved in advance by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.43 Windows and Doors. If storm doors are installed, they must be painted to match the exterior of the Dwelling Unit. No unfinished aluminum doors or windows will be allowed.

Section 6.44 Street Signs. Decorative street signs that do not conform to the City's standards nevertheless may be installed by Declarant during the Development Period. Any such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the City. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs and agrees to hold the City harmless related thereto.

Section 6.45 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

Section 6.46 Roofing Materials. The roofing materials on all Dwelling Units shall be similar in color and material, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Board of Directors and/or the Architectural Control Committee. No Owner shall be permitted to change or replace the shingles or other roofing materials without obtaining the prior written approval of the Board of Directors and/or the Architectural Control Committee unless the change or replacement is identical to what was originally in place.

Section 6.47 Solar Panels and Wind Turbines. No solar panels or wind turbines shall be permitted on any Dwelling Unit or upon any Lot unless approved in advance by the Board of Directors and/or the Architectural Control Committee.

Section 6.48 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by a public agency or public or private utility) shall be installed or maintained on any Lot.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration or in any Supplementary Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot including any improvements situated thereon. Except as may be specified in any Supplementary Declaration, all fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association, and, specifically, such Owner shall:

- (a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;

- (b) Remove all debris or rubbish from the Lot;
- (c) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (d) Cut down and remove dead trees from the Lot; and
- (e) Within sixty (60) days following completion of a Dwelling Unit, the Owner shall landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Such other maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article 11. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 7.2 Common Properties and Lawns by the Association.

- (a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
 - (i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees, and maintenance of any other improvement within the Common Area;
 - (ii) Maintenance of any entry signs, permanent subdivision identification sign, landscaping, mounding, fences, trails, pedestrian paths, multi-purpose fields, swimming pools, wading pools, bath houses, playground equipment, fountains, fire pit, sitting area, and/or any other improvements installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement, Woodland Preservation Easement, or similar easement;
 - (iii) Maintenance of any street lights and fountain lights which are installed by Declarant;
 - (iv) Maintenance of any brick surface installed by Declarant on any internal street or entryway; and
 - (v) Maintenance and repair of the paved surface installed by Declarant on the Common Area Easement.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Area owned by the Association, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

ARTICLE VIII

Insurance

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Association, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. Except as provided in any Supplementary Declaration, the same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

ARTICLE IX

Mortgages

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge maybe made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the “right of first refusal” to purchase any Dwelling Unit. Any right of “right of first refusal” subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any “right of first refusal” subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

(a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;

(b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or

(c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit’s unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

ARTICLE X

General Provisions

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys’ fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidation, unenforceability, or a conflict with applicable law (including, without limitation, Ind. Code § 32-25.5-3-1 et seq.) of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain valid and enforceable to the fullest extent permitted by law; provided that in lieu of such invalid, unenforceable, or conflicting provision, there will be added to this Declaration a provision as similar in terms to reflect the intent of Declarant as set forth herein to such invalid, unenforceable, or conflicting provision as may be possible and yet be valid, enforceable, and conforming (or such provision shall be modified, as applicable, to the extent necessary to be valid, enforceable, and conforming). No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 Assignment. Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant in the Records. After such assignment is recorded in the Records, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

Section 10.4 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Records, approved and signed by at least seventy-five percent (75%) of the Owners of Lots. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited in the paragraph immediately below, the Declarant reserves the right and power to amend this Declaration without the approval of the Owners: (i) to correct or clarify the legal description of the Property or to add Additional Property; (ii) to correct clerical or typographical errors; (iii) to make nominal changes in the Declaration, including without limitation, to amend ambiguous terms and to provide further explanatory language; (iv) to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency); or (v) to the extent necessary to enable the Declarant to meet any other reasonable need or requirement, including those associated with the completion of the development of the Property and to facilitate the making or marketing of first mortgages upon any lots. Notwithstanding anything herein to the contrary, the Declarant may unilaterally record any Supplementary Declaration. Any amendment must be recorded.

Neither the Association, the Owners nor Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements and minor conveyances for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

(c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 10.5 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

Section 10.6 Term. All easements described in this Declaration are permanent easements unless otherwise stated and are appurtenant to, and run with, the Property. They shall at all times inure to the benefit of and be binding on the Owner and the mortgagee from time to time of any Lots and the Owner and any mortgagee, if any, from time to time of the Common Areas, and their respective heirs, successors, personal representatives and/or assigns. The covenants and restrictions contained in this Declaration shall

run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to the Declaration, their respective personal representatives, heirs, successors and/or assigns, for an initial term commencing on the date this Declaration is recorded and ending December 31, 2054, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

ARTICLE XI

Optional Lot Services

Section 11.1 Optional Lot Services; Before and After the Applicable Date. Prior to the Applicable Date, and in recognition of the fact that many people want to avoid yard work and other Lot maintenance responsibilities, the Association shall offer each Owner the option of having the Association perform services that are described in Section 11.2 below. After the Applicable Date, the Association shall continue to offer such services, unless the homeowner-elected Board of Directors deems it no longer in the Association's best interests to provide all or some of such services, and the Board's decision is approved by a majority vote of the Owners at an annual or special meeting duly called at which a regular quorum is present in person or by proxy. In that event, the Board shall suspend or cancel the provision of one or more of the Optional Lot Services (as defined herein). However, in like manner and following the same procedure, the Association can later renew the provision of some or all of the Optional Lot Services described below.

Section 11.2 Optional Lot Services. For any Owner who elects, in writing, to receive optional Lot services, and if the Board of Directors accepts the Owner's request, the Association shall arrange for the following services (hereafter, "**Optional Lot Services**"):

- (a) Lawn Care. The Association shall be responsible for mowing the applicable Owner's Lot on an approximately weekly basis, which mowing service will include trimming around obstacles, power edging of driveways, walks and curbs, and cleaning walks and streets of grass clippings and debris. The mowing season generally will commence in April or May and shall generally end in October or November of each year; provided, however, that these time frames, as well as the frequency of mowings, are subject to such change as the Board of Directors shall reasonably deem appropriate, in light of the weather conditions and seasonal changes for a particular mowing season. Lawns shall be mowed to an approximate height of three to three and one-half inches (3" – 3 ½"), taking into consideration the recommendations of the lawn mowing provider. The Association will provide pre- and post-emergent weed and grass control for mulch beds, to include weeding of mulch beds. The Association will, in addition, provide broadleaf weed control for turf areas, turf fertilization, and insect control. Also, the Association will provide mulch annually.
- (b) Leaf Removal. The Association shall be responsible for the removal of leaves and other trimmings from the applicable Owner's Lot.
- (c) Snow Removal. For snow falls of three inches (3") or greater, the Association will remove snow from driveways and sidewalks leading from the driveway on a Lot to the front door of the Dwelling Unit on such Lot.

Prior to the Applicable Date, the Association shall contract with vendors and service providers for the above Optional Lot Services on an annual basis commencing January 1st, and shall be for a twelve (12) month period of time. However, when the first Owner of a Lot and Dwelling Unit takes title from the

Declarant or a Builder and that Owner elects to receive the Optional Lot Services, the Association may contract with the vendors and service providers on a prorata basis through the end of that calendar year.

Section 11.3 Lot Maintenance Assessment. Any Owner who requests the Optional Lot Services described above in Section 11.2 shall covenant and agree to pay to the Association an additional assessment that will be referred to as a Lot Maintenance Assessment. This assessment will be in addition to the Regular Yearly Assessment and the other assessments described in Article 5. The Board of Directors shall determine the amount of each Owner's Lot Maintenance Assessment by taking into consideration the size of the Owner's Lot, whether any portions will be inaccessible because of fencing or other obstructions, the amount of turf, trees and shrubs, the square footage of driveways and sidewalks, and any other factors that the Board deems relevant. Thus, the Board shall levy the Lot Maintenance Assessment on a Lot by Lot basis.

Recognizing that the extent and frequency of Optional Lot Services will vary due to things like the weather, the Board of Directors shall have the right to increase or decrease the Lot Maintenance Assessment that is then in effect without a vote of the Owners, subject to further rules or procedures adopted by the Board.

Section 11.4 Yearly Election. Each request by an Owner for the provision of Optional Lot Services shall be on an annual basis. Upon receipt of an Owner's request for the provision of the Optional Lot Services, the Board shall calculate the amount of the ensuing year's Lot Maintenance Assessment for that Owner's Lot and shall provide the same to the Owner. The Owner must acknowledge the amount of the Lot Maintenance Assessment on a form prescribed by the Board and return it to the Association's property management company. Upon receipt, a member of the Board or the Association's property manager shall sign the form and return a copy to the Owner signifying the Association's acceptance of the Owner's request.

Section 11.5 Manner of Payment. The Board of Directors shall determine the manner of payment of the Lot Maintenance Assessment, whether in one or more installments.

Section 11.6 Continuation and Proration Upon Conveyance of a Lot. When a Lot is conveyed to a new Owner, whether from the Declarant or a subsequent Owner, if the prior Owner opted for the Optional Lot Services, the new Owner shall be deemed to have consented to the continuation of those services for the remainder of the year in which the conveyance occurred. Thus, the new Owner will be responsible for the remainder of the Lot Maintenance Assessment for that time, and cannot cancel the provision of the Optional Lot Services.

Also, the Board of Directors shall have discretion in prorating the Lot Maintenance Assessment, depending upon the time of the year when an Owner takes title to a Lot. For example, if an Owner closes in June, the community is in the middle of the grass cutting season as opposed to a closing in February. The Board of Directors can take into the account the month of the closing and the balance of services to be provided during the remainder of the Owner's first calendar year of residency. Then, in January of the next year, the Association can put that Owner on an even 12 month payment plan for the Lot Maintenance Assessment.

Section 11.7 Owner Is Responsible. If the Association suspends or ceases the Optional Lot Services provided to an Owner's Lot, for non-payment or for any other reason, that Owner shall immediately be responsible to maintain his or her Lot to satisfy all requirements set forth in this Declaration.

[SIGNATURE ON FOLLOWING PAGE.]

Exhibit A

Legal Description

The land referred to in this Commitment, situated in the County of Hamilton, State of Indiana, is described as follows:

That part of the Southwest one-quarter of Section 34, Township 19 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

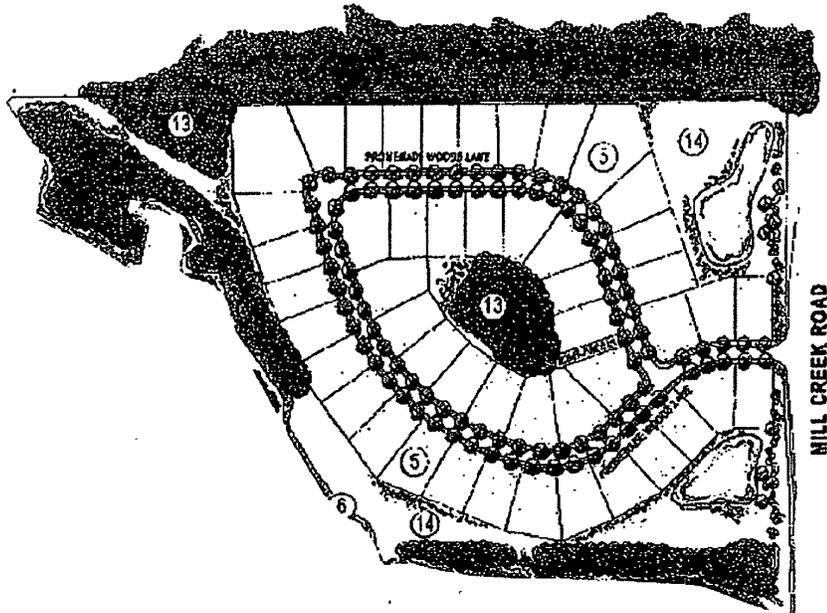
Beginning at the Northeast corner of the Southwest one-quarter of said Section 34; thence South 00 degrees 25 minutes 26 seconds West 1231.01 feet more or less along the East line of said Southwest one-quarter to a point in the centerline of Mill Creek, the next seventy-one (71) courses are along a line traversing the approximate centerline of said Mill Creek and are for mathematical closure only, the actual boundary of this tract of land follows the meandering centerline of said Mill Creek; thence 1) North 59 degrees 52 minutes 36 seconds West 114.73 feet; thence 2) North 87 degrees 00 minutes 01 seconds West 66.16 feet; thence 3) North 63 degrees 40 minutes 23 seconds West 49.08 feet; thence 4) North 45 degrees 00 minutes 59 seconds West 35.67 feet; thence 5) North 82 degrees 34 minutes 05 seconds West 26.80 feet; thence 6) South 73 degrees 07 minutes 33 seconds West 57.91 feet; thence 7) South 83 degrees 29 minutes 06 seconds West 54.49 feet; thence 8) North 85 degrees 16 minutes 02 seconds West 161.13 feet; thence 9) South 75 degrees 15 minutes 17 seconds West 64.31 feet; thence 10) North 43 degrees 10 minutes 54 seconds West 45.44 feet; thence 11) South 73 degrees 34 minutes 07 seconds West 27.43 feet; thence 12) North 78 degrees 59 minutes 07 seconds West 58.66 feet; thence 13) South 45 degrees 58 minutes 34 seconds West 37.87 feet; thence 14) South 83 degrees 08 minutes 49 seconds West 34.32 feet; thence 15) North 58 degrees 28 minutes 51 seconds West 48.75 feet; thence 16) South 87 degrees 19 minutes 44 seconds West 28.73 feet; thence 17) North 62 degrees 56 minutes 44 seconds West 62.51 feet; thence 18) South 55 degrees 01 minutes 00 seconds West 25.79 feet; thence 19) South 66 degrees 37 minutes 12 seconds West 59.75 feet; thence 20) North 53 degrees 29 minutes 13 seconds West 20.75 feet; thence 21) North 10 degrees 15 minutes 25 seconds West 49.76 feet; thence 22) North 21 degrees 28 minutes 29 seconds West 54.13 feet; thence 23) North 66 degrees 59 minutes 32 seconds West 63.80 feet; thence 24) North 25 degrees 04 minutes 00 seconds West 30.82 feet; thence 25) North 50 degrees 34 minutes 20 seconds West 29.25 feet; thence 26) North 26 degrees 07 minutes 53 seconds West 37.99 feet; thence 27) North 09 degrees 48 minutes 15 seconds East 23.95 feet; thence 28) North 23 degrees 18 minutes 07 seconds West 17.64 feet; thence 29) North 72 degrees 38 minutes 05 seconds West 40.72 feet; thence 30) North 33 degrees 03 minutes 47 seconds West 25.43 feet; thence 31) North 10 degrees 39 minutes 27 seconds West 22.25 feet; thence 32) North 31 degrees 09 minutes 45 seconds West 24.24 feet; thence 33) North 08 degrees 26 minutes 59 seconds East 52.21 feet; thence 34) North 32 degrees 21 minutes 34 seconds West 89.68 feet; thence 35) North 20 degrees 59 minutes 18 seconds West 55.08 feet; thence 36) North 54 degrees 50 minutes 15 seconds West 47.55 feet; thence 37) North 29 degrees 29 minutes 19 seconds West 32.11 feet; thence 38) North 09 degrees 34 minutes 22 seconds West 120.18 feet; thence 39) North 52 degrees 28 minutes 03 seconds West 38.90 feet; thence 40) South 61 degrees 19 minutes 47 seconds West 49.14 feet; thence 41) North 66 degrees 28 minutes 19 seconds West 27.23 feet; thence 42) North 08 degrees 32 minutes 45 seconds West 38.34 feet; thence 43) North 71 degrees 30 minutes 54 seconds East 48.64 feet; thence 44) North 04 degrees 52 minutes 27 seconds West 39.98 feet; thence 45) North 39 degrees 41 minutes 29 seconds West 54.73 feet; thence 46) North 67 degrees 14 minutes 55 seconds West 93.64 feet; thence 47) North 88 degrees 54 minutes 34 seconds West 34.27 feet; thence 48) South 47 degrees 44 minutes 34 seconds West 16.97 feet; thence 49) South 09 degrees 28 minutes 04 seconds East 19.84 feet; thence 50) South 67 degrees 01 minutes 03 seconds East 52.77 feet; thence 51) South 16 degrees 25 minutes 36 seconds West 41.04 feet; thence 52) South 01 degrees 15 minutes 52 seconds West 57.71 feet; thence 53) South 65 degrees 34 minutes 06 seconds West 32.61 feet; thence 54) North 72 degrees 29 minutes 42 seconds West 45.39 feet; thence 55) North 29 degrees 39 minutes 17 seconds West 35.84 feet; thence 56) North 10 degrees 56 minutes 14 seconds West 49.00 feet; thence 57) North 48 degrees 17 minutes 43 seconds West 25.56 feet; thence 58) South 42 degrees 22 minutes 28 seconds West 45.69 feet; thence 59) North 85 degrees 40 minutes 52 seconds West 20.20 feet; thence 60) North 22 degrees 06 minutes 34 seconds West 41.77 feet; thence 61) North 69 degrees 05 minutes 20 seconds West 18.38 feet; thence 62) South 51 degrees 21 minutes 22 seconds West 16.16 feet; thence 63) South 84 degrees 04 minutes 46 seconds West 21.16 feet; thence 64) North 52 degrees 35 minutes 30 seconds West 30.07 feet; thence 65) North 23 degrees 45 minutes 42 seconds West 14.51 feet; thence 66) North 21 degrees 27 minutes 34 seconds East 77.72 feet; thence 67) North 34 degrees 15 minutes 02 seconds East 22.39 feet; thence 68) North 32 degrees 10 minutes 00 seconds West 34.20 feet; thence 69) North 60 degrees 15 minutes 09 seconds West 71.23 feet; thence 70) North 28 degrees 34 minutes 18 seconds West 32.90 feet; thence 71) North 10 degrees 56 minutes 51 seconds West 58.84 feet; thence 72) North 41 degrees 48 minutes 43 seconds West 16.71 feet; thence North 89 degrees 21 minutes 28 seconds East 1880.35 feet along the North line of said Southwest one-quarter to the place of beginning. Parcel contains 35.69 acres more or less.

Exhibit B

Diagram of the Applicable Portion of the Preliminary Development Plan from the PUD

Legend:

- 5. Promenade Woods Residential Homesites
- 6. Creek
- 13. Woodland Preservation
- 14. Common Area



S.R. 32



INDS01 1474627v4