

## HUNTINGTON FARMS SUBDIVISION

### THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, COMMITMENTS, RESTRICTIONS, DESIGN GUIDELINES, EASEMENTS, AND ASSESSMENTS OF HUNTINGTON FARMS SUBDIVISION LAFAYETTE, INDIANA

THIS AMENDED AND RESTATED DECLARATION of Covenants, Conditions, Commitments, Restrictions, Design Guidelines, Easements, and Assessments, hereinafter referred to as the "Declaration" or the "Covenants," is made this \_\_\_\_\_day of August, 2005, by Wally's III, LLC, an Indiana limited liability company, hereinafter referred to as "Declarant" or the "Developer."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Lafayette, Tippecanoe County, Indiana, as more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Real Estate" or the "Development" or the "Subdivision"); and,

WHEREAS, Declarant desires to establish a system of assessments and charges to be borne by Lot (as hereinafter defined) owners of the Development (hereinafter referred to as "Owner" or "Owners") to provide for maintenance of the Common Property (as hereinafter defined) in the Development and for insurance coverage and mutual enforcement of the Covenants by the Owners;

WHEREAS, Declarant intends by this Declaration to impose upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of residential property within the Development by the recording of this Declaration;

WHEREAS, in furtherance of the above, Declarant executed the Declaration of Covenants, Conditions, Commitments, Restrictions, Design Guidelines, Easements and Assessments on February 11, 1997 (the "Original Declaration"), which Original Declaration was recorded on February 21, 1997 in the Office of the Recorder of Tippecanoe County, Indiana as Instrument Number 9703155; and the Amended and Restated Declaration of Covenants, Conditions, Commitments, Restrictions, Design Guidelines, Easements, and Assessments on September 19, 1997 (the "First Amended and Restated Declaration"), which First Amended and Restated Declaration was recorded on September 19, 1997 in the Office of the Recorder of Tippecanoe County, Indiana as Instrument Number 9719611; and

WHEREAS, Declarant desires to amend and restate the Original Declaration and the First Amended and Restated Declaration pursuant to this Declaration;

NOW, THEREFORE, Declarant hereby affirms that all of the properties described in Exhibit "A" shall hereafter be held, subdivided, sold and conveyed subject to the following Covenants which purport to protect the value and desirability of the Development, and which shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. This Declaration shall supersede and replace in its entirety the Original Declaration, which Original Declaration is hereby terminated and of no further force and effect.

ARTICLE I

## DEFINITIONS

The following are definitions of some of the terms used in this Declaration:

1. "Act" shall mean the Indiana Nonprofit Corporation Act of 1991.
2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association.
3. "Assessment" shall mean that share of the Common Expenses imposed upon each Lot, as well as any fees, costs, expenses, or fines as defined herein.
4. "Association" shall mean Huntington Farms Homeowner's Association, Inc. or an organization of similar name, its successors and assigns, and shall be created as an Indiana not-for-profit corporation hereafter. Its membership shall consist of Owners of Lots in the Development, who pay mandatory assessments for liability insurance, project sign assessments, maintenance, landscape easement maintenance, storm water retention lake maintenance, management fees and other expenses as determined by the Association.
5. "Builder" shall mean the contractors constructing the first residence on each Lot, which may be the Developer for one or more Lots. A "Builder" may be an "Owner" there under if otherwise qualified.
6. "Bylaws" shall mean the Bylaws of the Association.
7. "Committee" shall mean the Huntington Farms Architectural Control Committee.
8. "Common Expenses" shall mean the actual and estimated costs of operating the Association including, without limitation, maintenance, management, operation, repair, improvement and replacement of the Common Property, real estate taxes and assessments or personal property tax assessed against the Common Property, insurance expenses associated with the Common Property and any other costs or expenses incurred by the Association for the benefit of the Common Property. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the streets, utility lines and mains, drainage systems, or other improvements constructed by Developer.
9. "Common Property" shall mean (i) all portions of the Development shown on the Plats, or any part thereof, which are not dedicated to the public and which are not identified as Lots on any such Plats (such as public streets), whether the Plats are heretofore or hereafter recorded or amended, (ii) such portions of the Development as are herein declared to be Common Property even though located on or constituting part of one or more Lots shown on any Plats, whether or not declared to be Common Property on the Plats, and (iii) to the extent hereinafter established, such improvements located, installed or established in, to, under or across the Development as are herein declared to be Common Property whether located, installed or established entirely or partially on Lots or portions of the Development which are not Lots, or both, whether or not declared to be Common Property on the Plats, and (iv) and Out lots identified on any Plats heretofore or hereafter recorded or amended.
10. "Control Transfer Date" shall mean the date on which the Declarant is no longer a Class B Member of the Association.
11. "Dwelling Unit" shall mean a single-family residence, including attached garage, situated upon a Lot in the Development.
12. "Eligible Votes" shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.
13. "Lot" shall mean any residential portion of the Real Estate as shown on the Plats. No Lot may be subsequently subdivided for development purpose, except to adjust for minor side yard infractions which may occur. Where the context indicates or requires, the term Lot includes any structure on the Lot.

14. "Member" shall mean a person or entity entitled to membership in the Association, as provided herein.

15. "Out lot" shall mean any nonresidential portion of the Real Estate as shown on the Plats. Where the context indicates or requires, the Out lot includes any structure on the Out lot.

15. "Owner" shall mean a person who acquires any right, title or interest, legal or equitable, in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation.

16. "Plats" shall collectively mean those plats of all or any portion of the Development which have been or hereafter may be recorded in the office of the Recorder of Tippecanoe County, Indiana, including, without limitation, the plat recorded on February 21, 1997, as Instrument Number 9703154, Plat Cabinet E, Slide Number 149, or the plat recorded on September \_\_\_\_\_, 1998, as Instrument Number \_\_\_\_\_, Plat Cabinet \_\_\_\_\_, Slide Number \_\_\_\_\_, as any of the same may be supplemented or amended by replats or otherwise.

ARTICLE II  
CHARACTER OF THE DEVELOPMENT

A. In General: Each numbered Lot in the Development shall be a residential Lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any Lot except a single-family Dwelling Unit. These Covenants shall be subject to all applicable laws, rules, and regulations.

Each lettered Out lot in the Development shall be a nonresidential lot and shall be used exclusively for the purposes declared herein. Each lettered Out lot shall be owned by the Association and the Association shall maintain such Out lots and any improvements thereon. Out lot A shall be used exclusively for the purpose of a retention/detention pond and drainage pond.

No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted within any residence, provided, however, this restriction shall not be constructed to prohibit an Owner from:

1. Maintaining his professional library therein.
2. Keeping his personal business or professional records or accounts therein.
3. Handling his personal business or professional telephone calls or correspondence therein.

B. Other Restrictions: All Lots in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

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

No planting or gardening shall be done, and no fences, hedges, walls or any other structure or planting shall be erected or maintained upon the Common Property except by Declarant or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lots only in accordance with reasonable rules and regulations as may be adopted by the Association or as expressly provided herein. Specifically, the lakes and ponds in the Development shall not be used for swimming, boating, fishing or any

other purpose except as otherwise set forth herein. It is expressly acknowledged and agreed by all parties that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

D. Owner's Easement of Enjoyment: Every Owner shall have a right and easement of ingress and egress in and to, and, use and enjoyment of the Common Property, except any portion of the Common Property which lies within a Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

1. the right of the Association to suspend or terminate an Owner's voting rights in accordance with law and the Articles of Incorporation and Bylaws;

2. the right to suspend use of any such facilities for any period during which any assessment for Common Expenses against that Owner's Lot remains unpaid, and for any violation by an Owner of the Association's rules and regulations, for the duration of the violation and for an additional period thereafter not to exceed thirty (30) days;

3. the right of the Declarant to grant easements in and to the Common Property to any public agency, authority, or utility for such purposes as benefit only the Development or portions thereof and Owners or Lots contained therein;

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

5. the right of the Association to dedicate or transfer all or any portion of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the Declarant during any time that the Declarant owns any Lot(s) and otherwise by at least two-thirds (2/3) of all Eligible Votes.

This Section may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration. Unless otherwise specified herein, the Association's rights in this Section and all other Sections hereof pertain only to the Common Property.

E. Owner's Right to Ingress, Egress and Support: Each Owner shall have the right to ingress and egress over, upon, and across the Common Property necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

F. Rules and Regulations: The Board of Directors of the Association may establish reasonable rules and regulations concerning the use of the Common Property, facilities located thereon, and individual Lots in the Development, as appropriate. Copies of such rules, regulations and amendments thereto shall be furnished by the Association to all Owners prior to their effective date. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation or rule shall be specifically overruled, cancelled, or modified by the Board of Directors of the Association or the Members by two-thirds (2/3) of all Eligible Votes and with the written approval of the Class B Member prior to the Control Transfer Date. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure.

G. Declarant's Reserved Easement: Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, for the benefit of Declarant and its successors and assigns over,

under, in, and on the Development, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment and otherwise dealing with the Development and any other property now owned or which may in the future be owned by Declarant. The reserved easement shall constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

1. the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, and in all or any portion of the Development; and the right to tie into any portion of the Development with driveways, parking areas, streets, the drainage system and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development;

2. the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction and sale by Declarant of residences in all or any portion of the Development; and

3. the right to maintain a sales and marketing office for the Development within the Common Property without cost to Declarant until Declarant no longer owns any Lots in the Development.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property within the Development, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development. Declarant may grant to a Builder of Lots within the Development similar rights as granted to Declarant under 2 and 3 above.

This Section may not be amended without the advance written consent of Declarant as long as Declarant owns one or more Lots.

ARTICLE III  
RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF  
DWELLING UNITS AND OTHER STRUCTURES

A. Type, Size, and Nature of Construction Permitted and Approvals Required: No Dwelling Units, greenhouse, porch, garage, swimming pool, fences, basketball court, tennis court or other recreational facility shall be erected, placed or altered on any Lot without the prior written approval of the Committee. Such approval shall be obtained prior to the commencement of construction and shall take into account restrictions as to the type of materials, exterior facade, design, layout, location, landscaping and finished grade elevations.

1. Minimum Areas: The following restrictions shall apply: Any Dwelling Unit erected, placed or altered shall have the following minimum areas, exclusive of open porches, basements, and garages:

a. The minimum floor area of a single-story Dwelling Unit shall be 1,750 square feet; and

b. The minimum floor area of a Dwelling Unit of more than one story shall be 2,000 square feet.

2. Attached Garages: Each Dwelling Unit shall have a minimum of a two-car attached garage. No carports are allowed. Minimum garage size will be 400 square feet.

3. Roof Pitch: All dwellings, including attached garages, must have a minimum of 8/12 pitch on all front gables and hips, and a minimum of 6/12 on the main body of the dwelling.

4. Required Masonry: All dwellings shall have a minimum of forty percent (40%) masonry on the

front elevation, exclusive of doors, windows, garage doors and gables. Exceptions may be granted by the Committee where home style is not compatible with masonry.

5. Driveways and Off Street Parking Spaces: There shall be a minimum of four (4) off street parking spaces in each driveway. All driveways shall be constructed of concrete. A driveway shall not exceed in width the side boundaries of the garage it serves and must be a minimum width equal to the interior width of the garage it serves, except in the case of three or more car garages which may be tapered down to sixteen (16) feet at the curb. No additional parking shall be permitted on a Lot other than in the existing driveway. Builders shall install driveways during original construction of Dwelling Units. Asphalt driveways are not permitted.

6. Prohibition of Relocated or Moveable Structures: No Dwelling Unit, garage, out building or other structure of any kind may be moved onto any Lot. No trailer, mobile home, storage shed, tent, basement, shack, garage, motor home, barn or other structure shall be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose.

7. Time Limits on Construction: The exterior of every Dwelling Unit, garage, or other structure permitted to be constructed or to remain on any Lot shall be completed within nine (9) months from the start of construction, including the application of at least one (1) coat of paint, stain or varnish on any exterior wood surfaces. All such structures must be completed, and the site graded, sodded, or seeded as required and reasonably landscaped within one (1) year from the date of the commencement of construction thereof.

8. Maintenance of Lots During Construction: All Lots shall be kept and maintained in a slightly and orderly manner during the period of construction of any structures on said Lot. No trash or rubbish of any kind shall be permitted to accumulate in any Lot or adjacent Lots, except in dumpsters or enclosed areas which shall be placed on the Lots and not on the streets. The streets shall be kept clear of mud and dirt from water run off and excavation by Builder.

9. Basketball Goals and Similar Structures: To preserve the natural quality and aesthetic appearance of the Development, basketball goals or similar structures must be approved by the Committee for size, location, height, composition, and color prior to installation. No goal or structure may be installed or maintained such that playing basketball occurs in the street.

10. Fences: Except for landscape walls and perimeter fencing to be built by the Developer, all fences shall meet the following standards:

a. Pool fences must meet requirements of the Tippecanoe County Building Commission codes and Regulations.

b. No solid face construction shall be permitted without approval of the Committee.

c. All fences must be shadow box, split rail, black iron or aluminum picket style, cape cod, wood privacy, or other approved by the Committee.

d. Wooden fences may be painted or stained to blend with the color of the house.

e. The Committee will generally not approve the following: plain chain link fence, vinyl clad chain link, or stockade style fence.

f. For non-corner lots, no fence shall be installed between the front yard building setback line and the rear face of the house. For corner lots, no fence shall be installed between the building setback line and the side and front of the house facing the two respective streets.

g. All corner lot fences shall meet the requirement of Article III, section B of these Covenants.

h. The heights of shadow box fences or privacy fences may not exceed six (6) feet. The heights of any other type of fence may not exceed four (4) feet, except for pool fences described in a. above. Any fence must be maintained in good condition by the Owner, including repainting and restraining, as needed, removal of rust and repainting and repair of structural defects and deterioration.

i. No fencing will be permitted within fifty (50) feet of any lakes, and/or retention ponds, and fencing on Lots abutting lakes and/or retention ponds cannot be in excess of four (4) feet if wooden or six (6) feet if wrought iron unless specifically approved by the Committee. The purpose of this restriction is

to protect views of Lot Owners living adjacent to a lake.

j. All fences allowed hereby shall require prior approval from the Committee. Any deviation from the above requirements shall require approval from the Committee.

k. All fence bracing or ribbing shall be on the inside of the fence unless otherwise approved by the Committee.

l. All fences must be maintained in a reasonable fashion. Any warped boards shall be replaced on a timely basis. Any painted fences shall be maintained so that the fence always has a reasonable appearance. The Committee shall provide written notice of any maintenance violation. Such violations shall be corrected within thirty (30) days following receipt of said notice, weather permitting. If the violation is not corrected within such thirty (30) day period, the Committee, through the Association, retains the right to correct the violation and collect all applicable costs from the Lot Owner, including, but not limited to, lien rights, attorney's fees, cost of repairs, interest at the maximum rate allowable by law and all reasonable costs of collection.

11. Utility Lines: All utility lines in the Development shall be placed underground. Utility lines shall be installed under completed streets by jacking or boring methods. Street cuts shall not be permitted.

12. Storage Tanks: No above or below ground fuel storage tanks are allowed.

13. Gutters and Down Spouts: All gutters and down spouts shall color coordinate with the fascia colors of the house, except if copper gutters shall be installed.

14. Awnings and Patio Covers: Awnings and patio covers made of metal, fiberglass or similar type materials shall not be permitted in the Development without approval of the Committee.

15. Above-Ground Swimming Pools: No above-ground swimming pools shall be permitted in the Development. In-ground swimming pools shall be located in backyards only and must be approved by the Committee.

16. Storage Sheds: Committee approval shall be required for storage sheds or similar type structures. Roof, siding, and trim shall match the colors of the primary residence. No metal storage sheds or similar structures are allowed.

17. Satellite Dishes: The erection of satellite dishes with a diameter in excess of twenty-four (24) inches is prohibited. Dishes must not be visible from the street unless on a corner lot.

18. Light Fixtures: In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, outside light fixtures must be approved by the Committee as to size, location, height, composition, and color before they may be installed.

19. Utility Meters and HVAC Units: All utility meters and HVAC units in the Development shall be located in places not visible from the street or, if the meters or HVAC units must be located in the front of a Dwelling Unit, they shall be screened from view.

20. Clothes Lines: No outdoor clotheslines are permitted.

21. Trees: All trees as established on the Plats shall be planted by the Builder and maintained and replaced as needed by the Owners of the Lots on which the trees are located. No trees as established by the Developer may be removed without prior approval from the Committee. A minimum of two hardwood deciduous trees with a minimum diameter of 1.5 inches must be planted by the builder/Owner in the front yard. In the case of a corner lot the front yard will be considered the yard facing the street that the address appears on the lot's plot plan.

22. Dog Runs or Kennels: No dog runs, kennels or other exterior animal enclosures are allowed.

23. Signage. No signage shall be located in such a place whereby it restricts or obstructs traffic visibility. No identification signage will be allowed within the right-of-way of a dedicated public street, nor in any area not specifically approved by the Committee. All signage is subject to the approval of the Committee unless otherwise allowed herein.



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

C. Building Setback Lines: Front, side and rear building setback lines are established as shown on the Plats. Between said lines and the right-of-way lines of the streets and the side and rear lot lines, no structures may be erected or maintained.

D. Damaged Structures: No Dwelling Unit which has been partially or totally destroyed by fire or other catastrophic event shall remain in such state for more than thirty (30) days from the date of such occurrence.

E. Maintenance of Lots and Improvements: The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements thereon in such a manner to prevent the Lot or improvements from becoming unsightly. Without limitation on the generality of the foregoing, the Owner shall:

1. Establish and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height, except that the Developer or builders shall not allow the height of grass on vacant Lots to exceed nine (9) inches.
2. Keep the Owner's Lot free of debris and rubbish;
3. Prevent the existence of any other conditions which may detract from or diminish the aesthetic appearance of the Development;
4. Remove dead trees and replace with like species; and,
5. Maintain the exterior of all improvements in good repair to avoid any unsightly appearance.

#### ARTICLE IV EASEMENTS

The strips of ground shown on the recorded plat of the Development which are marked as drainage, utility and/or sewer easements are reserved for the use of public agencies and utility companies, including cable television companies and municipal agencies, but not including transportation companies, for the purpose of installing and maintaining swales, ducts, underground wires, sewers, drains and appurtenances thereto. Said easements shall be perpetual from the date of this instrument by the Developer, its successors and assigns. No permanent or other structures may be erected or maintained in said easements except for temporary structures, fences, driveways and walkways. The Owners of Lots in the Development shall take title to said Lots subject to the rights of said companies and agencies and the other Owners of Lots in the Development for purposes of ingress and egress in, along and through said easements so reserved.

#### ARTICLE V MISCELLANEOUS PROVISIONS AND PROHIBITIONS

A. Nuisances: No noxious or offensive activities shall be conducted on any Lot in the Development, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to the Owners of other Lots in the Development. Nor shall Developer, any officer, agent, employee or contractor thereof, the Association, or any Owner be liable for any damage which may result from enforcement of the provisions of this paragraph.

B. Signs: No signs or advertisements shall be displayed or placed on any Lot or structure in the Development without the prior written approval of the Committee, except that one sign of no more than six square feet may be displayed for the sale of a Lot or residence. However, Developer, Owners and designated builders may use "For Sale" and advertising signs during the sale of Lots and the construction of Dwelling Units in the Development.

C. Animals: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that:

1. They are not kept, bred, or maintained for any commercial purpose;
2. They do not become a nuisance to other Owners; and
3. They are leashed upon leaving Owner's Lot.

D. Vehicle Parking: Owner's vehicles shall be parked in garages or in driveways, Guest vehicles may be parked on the street for a period not to exceed forty-eight (48) hours. Any motor vehicle which is inoperative and not being used for normal transportation shall not be permitted to remain on any street or Lot except within an enclosed garage. Motor vehicles shall not be parked upon grassy or landscaped areas. Unless otherwise provided by the rules and regulations of the Committee, motor homes, mobile homes, boats, campers, commercial trucks and similar vehicles shall not be parked or stored upon a Lot unless within a closed garage. No vehicles shall be placed on blocks or jacks for purposes of repair, except for repairs made in enclosed garages.

E. Ditches and Swales: All Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales designated on the Plats which are located on their respective Lots. Owners of all Lots in the Development shall comply at all times with the provisions of the development plan (grading plan) as approved for this Development by the applicable governmental authority and the requirements of all drainage permits issued for any Lot within the Development. Any field tile or underground drain encountered during construction of any improvements within the Development shall be perpetuated. All Owners of Lots in the Development, their heirs, personal representatives, successors, and assigns, shall comply with all laws, ordinances, regulations, orders and other legal drainage requirements. No culverts shall be installed by any Lot Owner without the written consent of the applicable governmental entity.

No sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to discharge into the sanitary sewer system. Footing drains and down spouts shall not discharge into the sanitary sewer system. Down spouts shall discharge onto the surface at the ground or into the storm drainage system. Footing drains must be connected to storm drains. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Developer, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement of a nuisance or any other violation of these Covenants, including court costs and attorneys' fees, shall become a lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

F. Antennas: The Committee shall approve all exposed antennas. The maximum height of exposed antennas shall not exceed five (5) feet above the roof peak.

G. Solar Heat Panels: No solar heat panels are allowed.

H. Requirement to Mow Grass in Public Right-of-Way and Land Abutting Outlots: Each Owner shall mow the grass in public rights-of-way between the sidewalk and the curb adjacent to each Owner's respective Lot. Each Owner shall mow the grass in the drainage, sewer and utility easements contained within each Owner's Lot, including and up to the water lines of any retention ponds. Each Owner shall mow the grass on that portion of any Outlot containing a retention pond and abutting the Owner's lot up to the water lines of the retention pond.

I. No Vehicular Access: No vehicular access to State Road 26 West shall be permitted for any Lots that border state Road 26 West. This no vehicular access requirement shall be irrevocable by the Association and/or Lot Owners, and is enforceable by applicable governmental authorities.

J. Garbage, Trash, and Other Refuse: No Owner of a Lot in the Development shall burn or bury out-of-doors, any garbage or refuse. Nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his or her Lot. All trash must be in closed containers or bags. Trash containers shall only be placed on the curb after 7:00 o'clock p.m. the day before pickup and must be removed from the street on the day of collection.

K. Outside Toilets: No outside toilets shall be permitted on any Lot or Common Property in the Development (except during the period of construction and then only with the consent of the Committee).

L. Wells and Septic Tanks: No water wells shall be drilled on any of the Lots in the Development without the approval of the Committee. No septic tanks shall be installed on any of the Lots or on the Common Property.

M. Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited: No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the

Dwelling Unit shall have been substantially completed for occupancy shall be made by the building inspector of the governmental entity having jurisdiction over the Development and such decision shall be binding on all parties.

N. Landscaping Materials: All landscaping materials must be stock piled on the Homeowners property and must be dispersed in two weeks.

ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS

A. Membership: Every Owner of a Lot shall be a member ("Member") of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

B. Classes of Membership: The Association shall have two (2) classes of Members consisting of Class A Members and the Class B Member.

4 Class A. Class A Members shall be all Owners of Lots with the exception of the Declarant unless the Class B membership has been converted to a Class A membership as provided in subsection 2 hereof. Except as otherwise provided herein or in the Articles of Incorporation, each Owner shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised by the person whom the collective Members with respect to such Lot may designate. In the event that a membership stands of record in the names of at least two (2) persons or entities, then if one person or entity votes, the vote binds all persons. In no event shall such vote be split into fractional votes and in no event shall more than one vote be cast with respect to any Lot. Each vote cast with respect to a Lot shall presumptively be valid, but if such vote is questioned by any Member holding any interest in such Lot and if all such Members holding an interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted. In addition, the Association may reject a vote, consent, waiver or proxy appointment if there is a reasonable basis to doubt the validity of a signature or the signatory's authority.

5 Class B. The Declarant shall be the sole Class B Member. The Class B Member shall be entitled to four (4) votes per Lot that it owns for so long as it shall own any Lot or other real estate in the Development or until the Declarant's Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be converted to a Class A membership on the happening of the first to occur of the following events:

- a. When the Class B Member owns or is the contract purchaser of less than twenty-five percent (25%) of the Lots in the Development,
- b. When the Class B Member voluntarily surrenders its Class B membership, or
- c. Eight (8) years after the first Lot is conveyed to an Owner in any portion of the Development.

C. Responsibilities of the Association: The Association is hereby authorized to act and shall act on behalf 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 Property, the determination of Common Expenses, the collection of annual assessments and special assessments, and the granting of any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain insurance in accordance with the provisions of Article VIII hereof. The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

D. Control and Transfer of Control of Association: Until the Control Transfer Date, the Board of Directors of the Association shall consist of persons appointed by Declarant. Subsequent to the Control Transfer Date, the Board of Directors shall be elected by the Members as provided in the Bylaws.

ARTICLE VII

## MAINTENANCE

A. Notwithstanding any provision contained in the Plats to the contrary and subject to the rights and duties of the Owners set forth in this Declaration, the Association shall maintain and keep in good repair the Common Property. The maintenance of the Common Property shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Association's sole cost and expense as Common Expense, of all trees, fences, shrubs, grass, streets, Common Property parking spaces, bike paths, walks, drainage system improvements (including, without limitation, drainage ponds), the accent or special effect lighting system, central signage for the Development including street signage and other improvements situated upon the Common Property. The Association shall repair or replace any street sign that has incurred substantial damage or has been destroyed or removed within ten (10) business days of notice of such damage, destruction or removal.

B. The assessment for Common Expenses shall be assessed on a pro-rata basis for the Common Expenses associated with the Common Property.

C. In the event that the Board of Directors of the Association determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within three (3) days from the date of such notice; provided, however, that if the same is not capable of completion within the three (3) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

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

## ARTICLE VIII INSURANCE

### A. Insurance :

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

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

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

a. All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

b. All policies on the Common Property shall be for the benefit of the Lot Owners and their mortgagees as their interests may appear.

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

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

e. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Tippecanoe County area.

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

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

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

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

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

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

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

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

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

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

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

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

11 If it is determined that the damage or destruction to the Common Property for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section VIII C1 above.

D. Damage and Destruction:

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

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

14 In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portion of the Development shall be restored to its natural state and maintained as an undeveloped portion of the Common Property by the Association in a neat and attractive condition.

E. Repair and Reconstruction: If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment.

## ARTICLE IX CONDEMNATION

A. Condemnation:

15 Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners, to be disbursed as set forth in Section IXA2 hereof.

16 If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking the Class B Member and seventy-five (75%) per cent

of the Eligible Votes shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article VIII hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Property, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE X  
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

A. Common Property: The Association, subject to the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Property and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.

B. Services: The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration.

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

D. Self-Help: In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the ByLaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner five (5) days' written notice, delivered by certified mail, of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees and paraprofessional fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

E. Right of Entry: The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into structures and upon Lots for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant of the Lot.

F. Purpose of Assessment: The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. The word "assessments" as used herein shall mean all assessments referred to herein for Common Expenses including special assessments.

G. Creation of Assessments :

17 There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. Assessments for Common Expenses shall be allocated among all Owners within the Association as described in Section IXI hereof and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

18 Each such assessment, together with interest, costs, and reasonable attorney's fees and paraprofessional fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the

assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, all assessments shall be paid annually.

H. Computation of Assessment:

19 It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall list Common Expenses. Each Owner of any Lot in the Development hereby covenants and agrees to pay to the Association its allocated share (the "Allocated Share") of the annual assessments for Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Allocated Share of each Owner in the Development shall be determined by the Declarant until the Control Transfer Date and thereafter shall be determined by the Board and shall be the same amount for each Lot. The Board shall cause a copy of the budget and the amount of the assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. Each segment of the budget including, without limitation, the assessments for Common Expenses shall become effective unless disapproved at the meeting by a vote of at least two-thirds (2/3) of a quorum (as specified in the Bylaws) of the Members.

20 Notwithstanding the foregoing, however, in the event that (i) the proposed budget or the assessments for Common Expenses are disapproved in accordance with Section XH1, or (ii) the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget (or such portion thereof or assessments as shall have been disapproved in accordance with the foregoing) shall have been determined as provided herein, the budget (or applicable portion thereof or assessments) in effect for the then current year shall continue for the succeeding year.

21 In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year, except that so long as the Declarant controls the Association, and subject to Declarant's rights to impose special assessments, Declarant may, but shall be under no obligation, to fund such deficit; provided, however, that Declarant shall be reimbursed by the Association for any deficits so funded, together with interest at ten percent (10%) per annum until so reimbursed, from available surpluses in later years or through special assessments. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessments due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid, with interest, as required above before such excess shall be so credited to Owners.

I. Special Assessments:

1 In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed \$50 in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by two-thirds (2/3) of the Members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. The dollar and percentage limitations contained in this Section shall not apply to assessments levied pursuant to Section VIID hereof, and the total of special assessments hereunder shall be calculated without inclusion of any assessments levied pursuant to Section VIID hereof.

2 In addition to the other assessments authorized herein, the Association, instructed by The Tippecanoe County Surveyor's Office (TCSO), is assessing a fee for the inspection and maintenance for the Aqua Swirl



structures installed on the storm sewer lines prior to the storm water entering the lake. The Association is assessing a fee of \$10 dollars per Lot per year for compliance with the TCSO requirements. If additional monies are needed for the inspection and maintenance of the above mentioned structures the Association will pay the balance through the natural course of operations and levy a special assessment to cover the additional costs. In addition, the Association will provide to the TCSO on an annual basis, no later than the Last day of February each year, an estimate for the inspection and maintenance of the structures for that year. Furthermore, the Association must annually report to the TCSO a report outlining the current Association Officers, their contact information, amount of assessments collected and inspection and maintenance information. This report must be received by the TCSO via email or U.S. Mail delivery each year by the end of February.

J. Lien for Assessments :

22 All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees and paraprofessional fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first mortgage or on any mortgage to Declarant duly recorded in the land records of Tippecanoe County, Indiana, and all amounts advanced pursuant to such mortgage and secured thereby in accordance with the terms of such instrument.

23 All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

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

24 Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

25 All payments shall be applied first to costs and attorney's and paraprofessional fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

L. Subordination of the Lien to First Deeds of Trust and First Mortgages: The lien of the assessments, including interest, late charges, costs (including attorneys' fees and paraprofessional fees) provided for herein, shall be subordinate to the lien of any first mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve the Owner of such Lot from personal liability for all assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid

share of Common Expenses shall be deemed to be Common Expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

M. Date of Commencement of Annual Assessments: The annual assessments provided for herein shall commence as to Lots generally in September, 1997, and as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to an Owner or builder and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to an Owner; provided, however, that Declarant may, in its sole and absolute discretion delay the starting date for assessments for as long as Declarant shall deem appropriate in its sole and absolute discretion but assessments shall in all events be payable commencing on the first day of the first month following the date the Lot is occupied for the residential purposes or is suitable for such occupancy as evidenced, for example, by the appropriate official of Tippecanoe County, Indiana, or an architect issuing a certificate of occupancy or its equivalent stating that the residential structure on such Lot is substantially complete and available for occupancy.

N. Assessments by Declarant: Declarant shall not be required to pay any assessments for any Lots that it owns.

#### ARTICLE XI SUBMITTAL AND APPROVAL OF PLANS

A. Submittal of Plans: No building, wall or other structure, shall be commenced, erected or maintained in the Development, nor shall any exterior additions, changes, or alterations therein or thereto, be made until the plans and specifications for said additions, changes or alterations are submitted in writing to and approved in writing by the Committee as to harmony of external design and location in relation to surrounding structures and topography.

B. Approval of Plans: Approvals, determinations, permissions or consents of and for plans required herein shall be deemed given if they are given in writing and signed by a majority of the Committee.

C. Architectural Control Committee: The Committee shall be composed of three (3) members. All members of the Committee, including replacement members, shall be appointed by and shall serve at the will of the Declarant until the earlier of i) the Control Transfer Date or ii) thirty (30) days after Declarant notifies the Owners of its intention to transfer control of the Committee to the Owners. Upon such date, the Board of Directors of the Association shall appoint three (3) members to serve on the Committee. Notwithstanding the above, Developer will retain the approval of the first Dwelling Unit constructed upon any Lot. All other approvals of plans will be transferred to the Committee.

#### 26 Powers of Committee:

a. In General: No building structure, or improvement of any type or kind shall be constructed or placed on any Lot in the Development without prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee.

Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such purposed construction or improvement. Such plans shall include plot plans showing all existing conditions upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of one-quarter (1/4) inch equals one (1) foot, or to such other scales as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer, or architect. Plot plans submitted for building permits shall bear the stamp or signature of the Committee acknowledging the approval thereof.

b. Power of Disapproval: The Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement, when:

(7) the plans, specifications, drawings, or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration;

(8) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(9) the proposed improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare, or rights of all or any part of the other Owners.

c. Duties of Committee: The Committee shall approve or disapprove the proposed improvements within ten (10) days after all required information is received by it. One (1) copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval. In the event that a written approval is not received from the Committee within ten (10) days from the date of receipt of the information required to be submitted by this Declaration, the failure to issue such written approval shall be construed as the disapproval of any such plans submitted.

The submitting party can re-submit and if no written approval or denial is received, after the next ten (10) days, the no action shall be construed as approval.

d. In General: Any party to whose benefit these restrictions incur, including Developer, Association and any Owner in the Development, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, but neither Developer nor Association shall be liable for damages of any kind to any person for failing to abide by, enforce, or carry out any of these Covenants.

e. Liability of Committee: Neither the Committee nor any agency thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications, or other materials submitted to it, nor for any defects in any work done according thereto.

f. Inspections: The Committee may inspect work being performed to assure compliance with the Declaration and applicable regulations.

g. The failure of the Committee to act in any particular situation with any particular party shall in no way be a waiver of any right of action or enforcement in the future.

## ARTICLE XII

### ANNEXATION OF ADDITIONAL PROPERTY

#### A. Annexation without Approval of Owners:

27 As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of any other real estate adjacent to the Development ("Adjacent Property") as the same exists from time to time whether in fee simple or leasehold, by filing in the Recorder's Office of Tippecanoe County, Indiana, an amendment or supplemental declaration annexing such property. Such supplemental declaration or amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such supplemental declaration or amendment unless otherwise provided therein.

28 Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.

29 The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any

obligation on Declarant to impose covenants and restrictions similar to those contained herein upon such additional land, nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

B. Acquisition of Additional Common Property: Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association as a Common Expense for the benefit of all Owners.

C. Amendment: This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" attached hereto or any Adjacent Property.

ARTICLE XIII  
RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS  
HAVING ONE OWNER

Whenever two or more contiguous Lots in the Development are owned by the same Owner, and said Owner proposes to use two or more of said Lots as a site for one (1) Dwelling Unit, said Owner shall apply in writing to the Committee for permission to use said Lots for this purpose. If permission is granted, Owner must comply with all requirements of the applicable subdivision ordinance. The Lots constituting the site for said Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions while the Lots remain improved with one (1) Dwelling Unit. No Lot shall be divided into smaller Lots. No multiple-family dwellings shall be permitted in the Development.

ARTICLE XIV  
REMEDIES

A. Available Remedies: In the event of a violation, or threatened violation, of any of the Covenants herein recited, Declarant, the Association, the Owners, and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Covenants contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with the Covenants contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. All damages, together with interest, not to exceed the maximum legal rate, including, without limitation, reasonable attorneys' fees and paraprofessionals' fees actually incurred, shall be a continuing lien upon the Lot of the Owner that is in violation hereof.

B. Government Enforcement: The Tippecanoe County Area Plan Commission, its successors and assigns, shall have no right, power or authority to enforce any Covenants contained in this Declaration other than those covenants which expressly run in favor of the Tippecanoe County Area Plan Commission; provided further, that nothing herein shall be construed to prevent the Tippecanoe County Area Plan Commission from enforcing any provisions of the Unified Subdivision Ordinance, as amended, or any conditions attached to approval of the plat of the Development, by the Plat Committee, and any subsequent sections approved thereafter.

C. Delay or Failure to Enforce: No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or some of these Covenants shall be held to be a waiver by that party (or any estoppel of that party to assert) of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Covenants.

ARTICLE XV  
EFFECT OF BECOMING AN OWNER

The Owner of any Lot, by the acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of said Lot, shall accept said deed and execute said contract subject to all Covenants and Agreements herein contained. By acceptance of said deed or the execution of said contract, the Owner acknowledges the right and powers of Interested Parties with respect to the Covenants, and also, for themselves, their heirs, personal representatives, successors and assigns. Said Owner shall covenant and agree with and consent to Developer and with and to the Owners and subsequent Owners of each of the Lots affected by the Covenants to keep or comply with and perform said Covenants and Agreements.

ARTICLE XVI

TITLES

The underlined titles of the various Articles and Sections of these Covenants are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Covenants. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

ARTICLE XVII

DURATION AND AMENDMENT

A. Duration of Declaration: This Declaration shall be effective for an initial term of twenty (20) years from the date of its recordation by the Recorder of Tippecanoe County, Indiana, and shall automatically renew for additional terms often (10) years each, in perpetuity, unless at the end of any term the Owners of seventy-five percent (75%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.

B. Amendment of Declaration: This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing. Further, so long as Declarant owns any property in the Development or capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect, in the opinion of Declarant, the substantive rights of any Owner or mortgagee hereunder.

Upon the conversion of Class B membership to Class A membership, the Covenants may be amended upon the approval of sixty percent (60%) of the Lot Owners.

ARTICLE XVIII

SEVERABILITY

The within covenants shall run with the land and shall be binding on all parties claiming under them. Invalidation of any of the Covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

ARTICLE XIX

DEDICATION OF STREET RIGHTS-OF-WAY

All street rights-of-way shown on the plat and not heretofore dedicated to the public are hereby dedicated to the public.

ARTICLE XX

MISCELLANEOUS

A. Right to Indemnification and Advancement of Expenses: The Association shall indemnify as a matter of right every person made a party to a proceeding because such person is or was:

30. a member of the Board of Directors of the Association,

31. an officer of the Association, or

32. while a director or officer of the Association, serving at the Association's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not, (each an "Indemnitee") against all liability incurred by such person in connection with the proceeding; provided that it is determined in the specific case that indemnification of such person is permissible in the circumstances because such person has met the standard of conduct for indemnification specified in the Act. The Association shall pay for or reimburse the reasonable expenses incurred by an Indemnitee in connection with any such proceeding in advance of final disposition thereof in accordance with the procedures and subject to the conditions specified in the Act. The Association shall indemnify as a matter of right an Indemnitee who is wholly successful, on the merits or otherwise, in the defense of any such proceeding against reasonable expenses incurred by the person in connection with the proceeding without the requirement of a determination as set forth in the first sentence of this paragraph.

Upon demand by a person for indemnification or advancement of expenses, as the case may be, the Association shall expeditiously determine whether the person is entitled thereto in accordance with this Article and the procedures specified in the Act.

The indemnification provided under this Article shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article.

B. Other Rights. It is the intent of this Article to provide indemnification to directors and officers to the fullest extent now or hereafter permitted by law consistent with the terms and conditions of this Article. Nothing contained in this Article shall limit or preclude the exercise of, or be deemed exclusive of, any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any person who is or was a director, officer, employee or agent of the Corporation, or the ability of the Corporation to otherwise indemnify or advance expenses to any such individual.

Notwithstanding any other provision of this Article, there shall be no indemnification with respect to matters as to which indemnification would result in inurement of net earnings of the Corporation "to the benefit of any private shareholder or individual," within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended, or similar provisions of any subsequent Federal tax law. The provisions of, and the rights and obligations created by, this Article shall not give rise or be deemed to give rise to "compensation for personal services" as described in IC 34-4-11.5-1 et seq., as amended.

C. Construction and Sale: Notwithstanding any provisions contained in the Declaration to the contrary, so long as Declarant owns any Lots, it shall be expressly permissible for Declarant, free of any and all charges therefore, to maintain and carry on upon portions of the Common Property such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

D. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association. If any judgment is ever levied against Declarant (or its assignee), the same is hereby agreed to be limited to the extent of Declarant's (or such assignee's) interest in the Development; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon any other assets of Declarant (or its assignee).

E. Floodway Restrictions. No structures may be built on that portion of any Lots which lie within a floodway or flood plain. Any landscaping or other improvements made to any such part of the Lots, and any alterations thereon, shall be subject not only to approval of the Declarant (or the Association), but also to the prior approval of the Indiana Department of Natural Resources, its successors and assigns, and all other governmental agencies having jurisdiction thereof.

F. Construction Procedure. During construction of any Community, reasonable care shall be taken by the builders of the Lots therein to protect all public and private streets from decomposition due to construction. During construction, sites shall be kept as clean as possible to avoid blowing trash and to prevent mud from coming onto other portions of the Development or adjoining properties. Builders shall keep streets reasonably clean and free of dirt/mud and debris during construction periods and neither the Declarant nor the Association shall have responsibility or liability for the streets during construction.

WALLY'S III, LLC

By: \_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_  
(Printed Name, Title)

STATE OF INDIANA )  
 ) SS:  
COUNTY OF )

Before me, a Notary Public in aforesaid county and state personally appeared \_\_\_\_\_, who acknowledged the execution of the foregoing Amended and Restated Declaration of Covenants, Conditions, Commitments, Restrictions, Design Guidelines, Easements, and Assessments of Huntington Farms Subdivision, Lafayette, Indiana, for and on behalf of said corporation.

Witness my hand and seal this \_\_\_\_\_ day of August, 2005.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Notary Public

My Commission Expires:

County of Residence:

\_\_\_\_\_

\_\_\_\_\_

This instrument was prepared by David J. Schrader, 2121 South 7<sup>th</sup> Street, Lafayette, Indiana 47905.

EXHIBIT "A"

Legal Description