

**DECLARATION OF PROTECTIVE COVENANTS
AND RESTRICTIONS FOR THE TRIANGLE P.U.D.**

May 9, 2012

TABLE OF CONTENTS

ARTICLE I PURPOSE	1
ARTICLE II DEFINITIONS	1
Section 2.1 Architectural Guidelines	1
Section 2.2 Architectural Review Committee	2
Section 2.3 Association	2
Section 2.4 Common Area	2
Section 2.5 Declarant	2
Section 2.6 Developer	2
Section 2.7 Improvements	2
Section 2.8 Tract	2
Section 2.9 Occupant	3
Section 2.10 Owner	3
Section 2.11 Planned Unit Development	3
Section 2.12 Primary Residence	3
Section 2.13 Property	3
ARTICLE III ARCHITECTURAL REVIEW COMMITTEE	4
Section 3.1 Necessity of Architectural Review and Approvals	4
Section 3.2 Approval	4
Section 3.3 Powers and Duties	4
Section 3.4 Liability	5
Section 3.5 Limitation of Action	6
ARTICLE IV REGULATION OF IMPROVEMENTS	6
Section 4.1 Residential Use	6
Section 4.2 ARC Approval	7
Section 4.3 Laundry	8
Section 4.4 Landscaping	8
Section 4.5 Driveways	9
Section 4.6 Nuisance	9
Section 4.7 Signs	9
Section 4.8 Animals	9
Section 4.9 Trash Storage	10
Section 4.10 Antennae Systems	10
Section 4.11 Painting	10
Section 4.12 Finished Exteriors	10
Section 4.13 Fences	11
Section 4.14 Vehicles	11
Section 4.15 Commercial Vehicles	11
Section 4.16 Recreational Vehicles	11
Section 4.17 Towing	11
Section 4.18 Garage Usage	11
Section 4.19 Initial Construction and Marketing	12
Section 4.20 Holiday and Seasonal Decorations	12

Section 4.21	Window Adornments; Window Boxes.....	12
Section 4.22	Dusk to Dawn Coach Lights and Garage Lights	12
Section 4.23	Parking of Vehicles in Driveways and On-Street Parking Spaces.....	12
Section 4.24	No Event Parking.....	12
Section 4.25	Additional Rules and Regulations.....	12
Section 4.26	No Implied Waiver	13
ARTICLE V MAINTENANCE.....		13
Section 5.1	Maintenance Responsibilities	13
Section 5.2	Enforcement	14
Section 5.3	Access at Reasonable Hours	14
ARTICLE VI PROPERTY RIGHTS		14
Section 6.1	Owners' Easements of Enjoyment	14
Section 6.2	Permitted Operations and Uses.....	15
Section 6.3	Delegation of Use	15
Section 6.4	Easements.....	15
Section 6.5	Right of Entry	15
Section 6.6	Non Partition.....	15
ARTICLE VII ASSOCIATION		15
Section 7.1	Membership	16
Section 7.2	Voting.....	16
Section 7.3	Association Board	16
ARTICLE VIII MAINTENANCE ASSESSMENTS		16
Section 8.1	Creation of the Lien and Personal Obligation of Assessments.....	16
Section 8.2	Purpose of Assessment	16
Section 8.3	Annual Assessments	17
Section 8.4	Special Assessments.....	17
Section 8.5	Uniform Rate of Assessment.....	17
Section 8.6	Date of Commencement of Annual Assessments, Due Dates.....	17
Section 8.7	Duties of the Board of Directors.....	17
Section 8.8	Repair Assessment.....	17
Section 8.9	Effect of Non-Payment of Assessment: the Lien, the Personal Obligation, Remedies of Association	18
Section 8.10	Subordination to Lien of Mortgages.....	18
ARTICLE IX REPURCHASE RIGHTS OF DEVELOPER		18
Section 9.1	Right to Repurchase if No Construction	18
Section 9.2	Developer's Right of First Refusal on Transfer of Unimproved Tracts....	19
ARTICLE X DEVELOPER'S RESERVED RIGHTS TO PROPERTY		20
Section 10.1	Extension of Covenants and Restrictions to Include Additional Property	20
Section 10.2	Withdrawal of Land	20
Section 10.3	Platting and Sub-Division Restrictions.....	20
Section 10.4	Public Roads-Easements	20
ARTICLE XI MISCELLANEOUS.....		21
Section 11.1	Term.....	21
Section 11.2	Indiana Law	21

Section 11.3	Termination and Modification	21
Section 11.4	Assignment of Developer's Rights and Duties	21
Section 11.5	Mutually, Reciprocity, Runs with the Land.....	22
Section 11.6	Benefits and Burdens.....	22
Section 11.7	Notices.....	22
Section 11.8	Singular and Plural	22
Section 11.9	Failure to Enforce Not a Waiver of Rights.....	22
Section 11.10	Constructive Notice and Acceptance	22
Section 11.11	No Waiver.....	23
Section 11.12	Captions.....	23
Section 11.13	Severability.....	23
EXHIBIT A – LEGAL DESCRIPTION.....		25
EXHIBIT B – BY-LAWS		1
EXHIBIT C – ARCHITECTURAL GUIDELINES.....		1
EXHIBIT D – EXAMPLE HOUSE MODEL DESIGNS.....		1

**DECLARATION OF PROTECTIVE COVENANTS
AND RESTRICTIONS FOR THE TRIANGLE P.U.D.**

THIS DECLARATION, made this 9th day of May, 2012, by Northeast Neighborhood Revitalization Organization, Inc., an Indiana Not-for-Profit Corporation (hereinafter referred to as the "Developer"), which declares the real Property comprised of all the Platted Lots, Parcels and Sites, of the Planned Unit Development, the legal description of which is attached hereto, incorporated herein by reference and marked as Exhibit A, to be known as "Triangle P.U.D." which is currently owned by the Developer, is and shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

**ARTICLE I
PURPOSE**

The purpose of these Covenants and Restrictions is to ensure the proper use and most appropriate development of Triangle P.U.D. (hereinafter referred to as "the Triangle") through the imposition of uniform standards. The Triangle is a Planned Unit Development subdivision designed to consist of single-family, owner-occupied residences. Accordingly, it is the intent of these Covenants and Restrictions to provide conditions, covenants, restrictions, easements, charges and liens which ensure that the Triangle will always be maintained as an attractive, quality-oriented, uncongested, owner-occupied, single-family residential community consistent with the Northeast Neighborhood Plan developed by the City of South Bend Redevelopment Commission. These Covenants and Restrictions are intended to protect the Owners of Property in the Triangle against improper and undesirable uses of surrounding Property. In essence, these Covenants and Restrictions should guard against unwarranted Property depreciation that can be caused by such factors as haphazard and unharmonious improvements and uses not compatible with an owner-occupied, single-family residential community.

**ARTICLE II
DEFINITIONS**

The following words, when used in this Declaration, have the following meanings:

Section 2.1 "Architectural Guidelines" means and refers to the quality and character specifications prepared by the Declarant as of May 9, 2012. Such Architectural Guidelines may be modified or amended from time to time in the future by Declarant in its sole discretion subject to any necessary approval and/or changes by any regulatory authorities of the City of South Bend, County of St. Joseph, Indiana, or other governing body, and shall be binding upon all Owners and Occupants of the Triangle. A copy of the Architectural Guidelines is attached hereto as Exhibit C.

Section 2.2 "Architectural Review Committee" (hereinafter referred to as the "ARC") shall be composed of no less than three (3) and no more than five (5) individuals designated from time to time by the Board of Directors of the Association which individuals shall initially be Gregory Hakanen, Karl King, Charles Nelson, William Stenz, and Marguerite Taylor, and shall have the powers and duties as set forth herein. At least one (1) member of ARC shall be a neighborhood resident Board Member of the Developer, and at least one (1) member shall be an institutional Board Member of the Developer.

Section 2.3 "Association" means and refers to the Triangle Homeowners' Association, an Indiana Not-for-Profit Corporation. This is the Declaration of Protective Covenants and Restrictions to which the Articles of Incorporation (hereinafter referred to as the "Articles") and By-laws (hereinafter referred to as the "By-laws") of the Association make reference. Copies of the By-Laws are attached hereto and made a part hereof as Exhibit B.

Section 2.4 "Common Area" means and refers to all real and/or personal property which the Association and/or the Developer owns or has an interest in for the common use of the members of the Association, including, but not limited to, park landscape, entry features, directional graphic system, drainage, landscape medians, security, safety, bicycle paths, sidewalks, roads, project lighting and recreational purposes or any other use to which a majority of the membership of the Association may accede. The Developer agrees that all of the Common Areas, fee simple title to which may be owned or held by the Developer, shall be conveyed to the Association not later than one hundred twenty (120) days after the Developer relinquishes control of the Board of Directors, pursuant to Section 7.3.

Section 2.5 "Declarant" means and refers to the Developer, its successors and assigns, and include any person or entity to which Declarant may assign its rights, privileges, duties and obligations hereunder, which rights, privileges, duties and obligations are and shall be assignable.

Section 2.6 "Developer" means and refers to Northeast Neighborhood Revitalization Organization, an Indiana Not-for-Profit Corporation, its successors or assigns of any or all of its rights under this Declaration.

Section 2.7 "Improvements" means and refers to any man-made changes in the natural condition of the land including, but not limited to, structures and construction of any kind, whether above or below the land surface, such as any building, fence, wall, sign addition, alteration, screen enclosure, sewer, drain, disposal, lake, waterway, road, paving, utilities, grading, landscaping, sign and exterior illumination, including any changes in any exterior color or shape and any new exterior construction or exterior improvement.

Section 2.8 "Tract" means and refers to any parcel of the Property in the Triangle, also known as a "Lot", together with any and all Improvements thereon, created and existing by the Planned Unit Development recorded in the Office of the Recorder of St. Joseph County, Indiana, on which any Improvement could be constructed, whether or not it has been constructed.

Section 2.9 "Occupant" means and refers to the natural person or persons who reside in a house on a Tract and for whom said house is the Primary Residence, as hereafter defined.

Section 2.10 "Owner" means and refers to the record owner, whether or not one or more partners, natural persons, trusts, corporations or other entity, of the fee simple interest to a Tract or any other portion of the Property, including contract sellers (but not contract purchasers), their heirs, successors, personal representatives or assigns.

Section 2.11 "Planned Unit Development" means and refers to the Planned Unit Development of the Triangle approved by the City of South Bend Common Council and recorded as Document Number 1213048 in the Office of the Recorder of St. Joseph County, Indiana. The terms and conditions of the Planned Unit Development are incorporated herein by reference.

Section 2.12 "Primary Residence" means a person's main home as it is determined according to guidelines stated in Internal Revenue Service Publication 523 (2009). That is, a person's main home is determined by the following factors:

- (A) where the person lives most of the time, and
- (B) other factors, including the following:
 - (1) person's place of employment,
 - (2) location of the person's family members' main home,
 - (3) person's mailing address for bills and correspondence,
 - (4) address listed on the person's:
 - (a) Federal and state tax returns
 - (b) Driver's license
 - (c) Car registration
 - (d) Voter registration card
 - (5) location of the banks the person uses, and
 - (6) location of recreational clubs and religious organizations of which the person is a member.

Section 2.13 "Property" means "the Triangle" and refers to the real Property described in Exhibit A hereof and any portion thereof, and any and all Improvements thereon and additions thereto, as are subject to this Declaration.

ARTICLE III
ARCHITECTURAL REVIEW COMMITTEE

Section 3.1 Necessity of Architectural Review and Approvals. No Improvements, of any kind, shall be commenced, constructed, erected, placed, altered or maintained upon any Tract, nor shall any addition, change or alteration thereon or thereof be made, nor shall any subdivision, platted or replatted, of any Tract be made until plans and specifications with respect thereto, in manner and form satisfactory to the ARC, showing the proposed Improvements, plot layout and all exterior elevations, materials and colors, signs and landscaping, grading, easements and utilities, proposed building use, use of an approved builder, and such other information as may be requested by the ARC, have been submitted to and approved in writing by the ARC. Such plans and specifications shall be submitted in writing over the signature of the Owner of the Building Site or the Owner's authorized agent.

Section 3.2 Approval. Approval shall be based, among other things, upon: (i) the adequacy of building site dimensions; (ii) the conformity and harmony of exterior design with neighboring structures; (iii) the effect of location and use of Improvements on neighboring building sites; (iv) the intended operations and uses; (v) the relation of the Improvements with the topography; (vi) the grade and finished ground of the building site being improved to that of neighboring building sites; (vii) proper facing of main elevation with respect to nearby streets; (viii) the conformity of the plans and specifications with the Architectural Guidelines. The ARC shall not arbitrarily or unreasonably withhold its Approval of such plans and specifications.

Section 3.3 Powers and Duties. The ARC shall have the following powers and duties:

(A) To recommend, from time to time, to the Board of Directors of the Association modifications and/or amendments to the Architectural Guidelines. Any modification or amendment to the Architectural Guidelines shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and are approved in writing by the Developer. Notice of any modification or amendment to the Architectural Guidelines, including a verbatim copy of such change or modification shall be delivered to each member of the Association; provided that the delivery to each member of the Association of notice and a copy of any modification or amendment to the Architectural Guidelines shall not constitute a condition precedent to the effectiveness or validity of such change or modification.

(B) To require submission to the ARC of at least two (2) complete sets of all plans and specifications for any Improvement, the construction or replacement of which is proposed upon any Tract, in the Triangle. The ARC may also require submission of samples of building materials and colors proposed for use on any Tract, and may require such additional information as reasonably may be

necessary for the Improvements in accordance with this Declaration and the Architectural Guidelines. Review shall be coordinated with any required City and County Approvals or Approvals of other governing bodies.

(C) To approve or disapprove any Improvement, change, or modification thereto, the construction, erection, performance or placement of which is proposed upon any Tract in the Triangle and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARC shall be submitted in writing to the Board of Directors of the Association, and any evidence thereof may, but need not, be made by a certificate, in recordable form, executed under seal of any President or any Vice-President of the Association. Any party aggrieved by a decision of the ARC shall have the right to make a written request to the Board of Directors of the Association, within thirty (30) days of such decision, for a review thereof. The determination of the Board upon reviewing any such decision shall, in all events, be final and dispositive upon all parties.

(D) If any Improvement is changed, modified or altered without prior approval of the ARC, then the Owner shall, upon demand, cause the Improvements to be restored to comply with the plans and specifications originally approved by the ARC and shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the ARC.

(E) To adopt a schedule of reasonable fees for the processing of requests for ARC approval of proposed Improvements. Such fees, if any, shall be payable to the Association in cash, at the time that plans and specifications are submitted to the ARC. In the event such fees, as well as any other costs or expenses of the ARC pursuant to any other provisions of this Article are not paid by the Owner, they shall become a lien of the Association on the Property, pursuant to Article VIII hereof.

(F) To retain professional advisors such as attorneys or architects as may be necessary in the exercise of its powers, and to develop a list of Preferred Builders experienced in the construction of residences consistent with the Architectural Guidelines.

(G) To establish a process and to create a list of Preferred Builders from which Lot Owners can choose to construct their Residence.

(H) To perform such incidental acts as may be necessary in the exercise of its powers.

Section 3.4 Liability. Neither the ARC nor Declarant or their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or

nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications. Every person who submits plans to the ARC for approval agrees, by submission of such plans and specifications, and every Owner or tenant of any of said building sites agrees, by acquiring title thereto, or an interest therein, that he or she will not bring any action or suit against the ARC or Declarant to recover such damages.

Section 3.5 Limitation of Action. Notwithstanding anything to the contrary herein contained, after the expiration of one (1) year from the date of issuance of a building permit by the appropriate governmental authority for any Improvement or three (3) months after the completion of any Improvement, whichever shall last occur, said Improvements shall, in favor of purchasers and encumbrances, in good faith and for value, be deemed to be in compliance with all provisions of this Article, unless actual notice of such noncompliance or non-completion, executed by the Association, shall appear of record in the office of the St. Joseph County Recorder, Indiana, or unless legal proceedings shall have been instituted to enforce compliance or completion.

ARTICLE IV REGULATION OF IMPROVEMENTS

Section 4.1 Residential Use. It is Declarant's intent that the Property and any Lots therein or thereon shall be used exclusively for single-family residential purposes with their Owners being also their Occupants, except as otherwise provided in Section 4.19 hereof. Accordingly, without limiting the generality of the foregoing sentence, it is expressly provided that:

- (A) Declarant reserves to itself exclusively all rights, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat.
- (B) No building shall be erected, altered, placed, or permitted to remain on any Lot other than one house and one garage, which is either attached to or detached from the house, approved by the Association and appropriate Local Governing Authorities.
- (C) Any house shall be deemed to be in its entirety one (1) dwelling unit ("Dwelling Unit").
- (D) The Owner of any house shall be its Occupant and must actually occupy the house for more than six (6) months in any given year to be in compliance with this Declaration. In cases where Owner is an organization such as a trust, Limited Liability Company or corporation, the natural person who is Settlor of the Trust, Manager of the Limited Liability Company, or President or Chief Executive Officer of the corporation shall be the Occupant of the house and must actually occupy the house for more than six (6) months in any given year to be in compliance with this Declaration.

(E) Each house shall be its Owner's Primary Residence. In cases where Owner is an organization such as a trust, Limited Liability Company or corporation, the house shall be the Primary Residence of the natural person who is Settlor of the Trust, Manager of the Limited Liability Company, or President or Chief Executive Officer of the corporation.

(F) Any house shall be for use solely by Occupant. For the avoidance of doubt, it is expressly provided that the phrase "for use solely by Occupant" in the foregoing sentence prohibits any short-term rental or long-term rental, including overnight lodging for which a fee is charged, of the house or any part of the house.

Section 4.2 ARC Approval. No Structure (as the term is hereafter defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the ARC, and, if required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term "Structure" includes, but is not limited to, any building or portion thereof, including, without limitation, walls, roofs, decks, patios, stairs, windows, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, doors, pavement, walkways, driveways, garages and/or garage doors.

Without limiting the generality of the foregoing provisions, the following shall apply to Structures erected on a Lot:

(A) The exterior design of any house erected or placed on any Lot must be deemed by the ARC, in its sole discretion, to satisfactorily conform to one of the Architectural House Styles described and illustrated in the Architectural Guidelines. Without limiting the generality of the foregoing sentence, the drawings attached as Exhibit D illustrate examples of house designs that conform to the Architectural House Styles and comply with the House Square Footage requirements set forth in (B) below.

(B) Any house erected or placed on any Lot shall contain House Square Footage (as the term is hereafter defined) no less than one thousand one hundred (1,100) and no more than two thousand four hundred (2,400). As used herein, the term "House Square Footage" means the total inside area in square feet of the house, not including any attic, basement, crawl space, porch, or attached garage.

(C) Every house shall have a garage, which:

- (1) may be either attached or detached,
- (2) shall have the same exterior material as the house,

- (3) shall contain a total inside area that is no less than four hundred (400) square feet and no more than six hundred (600) square feet.

(D) In no event shall any of the following Structures be permitted to be erected or placed on any Lot:

- (1) any detached building other than a garage which conforms to the specifications set forth in 4.2 (C) above, such as a barn, shed, dog house, kennel, greenhouse, poultry coop, or playhouse;
- (2) dog run;
- (3) hot tub;
- (4) swimming pool;
- (5) tent.

(E) No basketball goal or other play equipment shall be erected or placed on any Lot except in the Back Yard. As used in this document, "Back Yard" means the area extending from one side of the Lot to the opposite side of the Lot between the rear edge of the house and the Rear Lot Line, where: (i) "Rear Lot Line" means the Lot line opposite and most distant from the Front Lot Line, and (2) "Front Lot Line" means the Lot line separating a Lot from the primary street right of way line.

Section 4.3 Laundry. No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

Section 4.4 Landscaping. Prior to landscaping any Lot (other than perennial flowers within approved flowerbeds), the Owner of such Lot must submit a written landscape plan to the ARC for its review and approval or disapproval.

In addition, the Owner of each Lot shall comply with the following specific provisions regarding landscaping the Lot:

(A) An underground irrigation system shall be installed, as part of constructing the house, to cover at least the Front Yard (as hereafter defined) and, on a corner lot, the Side Corner Yard (as hereafter defined).

(B) Landscaping shall be installed in the Front Yard and, on a corner lot, in the Side Corner Yard within six (6) months of occupancy. The landscaping shall be formal in design and include a lawn and shrubs.

(C) At least the Front Yard and, on a corner lot, the Side Corner Yard shall be seeded or sodded to lawn grass, except for any portions used in other decorative landscaping techniques, such as flower beds and shrubs. The Front Yard lawn shall be completed to the front street curb; and, on a corner lot, the Side Corner Yard lawn shall be completed to the side street curb.

(D) Shrubs shall be planted in at least the Front Yard in groups of at least ten (10) of the same or aesthetically compatible species, rather than as individuals, except that small decorative, ornamental or flowering trees may be planted as individuals. On a corner lot, this provision shall also apply to the Side Corner Yard.

(E) Shrubs shall not exceed four (4) feet in height, except that small decorative, ornamental or flowering trees are permitted to exceed this height.

The terms "Front Yard" and "Side Corner Yard", as used in this document have the meanings set forth below:

(A) "Front Yard" means the area extending across the entire width of a lot between the front edge of the house and the Front Lot Line.

(B) "Side Corner Yard" means the area that extends along the side of a corner lot between the side of the house and the secondary street right-of-way line.

Section 4.5 Driveways. All driveways to garages shall be constructed as part of constructing the house and shall be concrete or paving brick. For the avoidance of doubt, it is expressly stated that this provision is intended to prohibit unfinished, gravel, and asphalt driveways.

Section 4.6 Nuisance. No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot.

Section 4.7 Signs. The only signs permitted on the Property shall be customary home and address signs ("Permitted Signs"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total surface area and may not be illuminated.

No signs advertising a Lot for sale shall be permitted on said Lot until such time as all of the Lots developed as a part of the Project have been sold by Declarant to an initial buyer. All signs advertising a Lot for sale shall be removed within three (3) days from the date of the conveyance of the Lot. The design, color, message, and location of any signs advertising a Lot for sale shall be subject to the review and final approval of the Association, and no such sign shall be placed on said Lot without the prior written approval of the Association. No more than one (1) sign advertising a Lot for sale shall be permitted on said Lot, and in no event shall any signs indicating the Lot is available for rent or lease be permitted.

Section 4.8 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or in the Common Areas or on the Property, except that pet dogs, pet cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. No more than two (2) such pets shall be permitted in any Dwelling Unit unless prior approval

and consent is obtained from the Association, and the Association may delegate this authority to the managing agent. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. The tethering of pets in any area does not constitute "attended." Any Owner walking a pet within the Triangle or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. The Association may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring a pet on the Property shall deposit with the Association a security deposit in an amount to be determined by the Association to cover any damage that may be caused by such pet to the Common Areas. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Property, except to the extent said deposit has been used to repair damage caused by such pet. Any requirement for the depositing of such a security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet, which, in the judgment of the Association, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property within ten (10) days after written notice from the Association to the respective Owner to do so.

Section 4.9 Trash Storage. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

Section 4.10 Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the ARC. The ARC shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible.

Satellite dishes will not exceed eighteen (18) inches in diameter. It is the intent of this provision that the ARC shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the ARC conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 4.11 Painting. No person shall paint the exterior of any Dwelling Unit, Structure, or building, or any portion thereof, a color different from the original color of said Dwelling Unit, Structure, building or portion thereof without the proposed color having been first approved in writing by the ARC and the Association.

Section 4.12 Finished Exteriors. The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than

six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Association in writing. Absent approval from the ARC to the contrary, all maintained, repaired, or replaced roofs and other structure exterior shall be the same color and texture as the original roof and other structure exterior.

Section 4.13 Fences. Any fence erected or placed on a Lot shall be subject to prior approval by the ARC and shall be subject to the following restrictions:

- (A) A fence shall not be erected or placed on a Lot except in the Back Yard, as "Back Yard" is defined in Section 4.2.
- (B) A fence shall not be greater than four (4) feet in height;
- (C) A fence shall not incorporate chain link, wire mesh, or any similar fabric;
- (D) A fence shall not be of the privacy or solid screening type; and
- (E) A fence shall be constructed of the same material and shall be of the same height throughout.

Section 4.14 Vehicles. No inoperable, junk, unregistered or unlicensed vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

Section 4.15 Commercial Vehicles. No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the ARC.

Section 4.16 Recreational Vehicles. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, mobile homes, travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the ARC, as to location, size, screening, and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

Section 4.17 Towing. The Association shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, at the vehicle owner's sole expense.

Section 4.18 Garage Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep their garages at all times in a manner and condition that will permit the use of such garage for parking of at least two (2) conventional passenger vehicles, vans and/or trucks. The use of a garage at any time as a residence, either temporarily or permanently, is prohibited.

Section 4.19 Initial Construction and Marketing. The Developer or its assigns, or any Designated Builder, may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or Structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Triangle.

Section 4.20 Holiday and Seasonal Decorations. The time period during which decorations and/or ornamentation shall be permitted to be placed on the exterior of a Dwelling Unit or Structure shall be determined by the ARC, at its sole discretion.

Section 4.21 Window Adornments; Window Boxes. No decorations, adornments, or items including, but not limited to, signs, placards, beverage containers, or posters shall be permitted to be placed in any window of a Dwelling Unit or structure. Notwithstanding the foregoing, this provision shall not prevent the following decorations and/or adornments from being placed in Dwelling Unit windows: curtains, drapes, blinds, candles, lights, or plants. No window boxes containing flowers or any other vegetation shall be erected or attached to any Dwelling Unit.

Section 4.22 Dusk to Dawn Coach Lights and Garage Lights. Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit or garage entrance lights in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights and garage entrance lights remain continuously operational from dusk to dawn.

Section 4.23 Parking of Vehicles in Driveways and On-Street Parking Spaces. No more than two (2) conventional passenger vehicles, vans and/or trucks shall be parked in a driveway of or to a Lot at a time. The Owner or its invitees, shall be permitted to park one (1) conventional passenger vehicle, van and/or truck in the On-Street Parking Space appurtenant to the Owner's particular Dwelling Unit and designated in the Plat. No more than two (2) total vehicles, vans and/or trucks shall be parked on a Lot, including the garage, the driveway, and the On-Street Parking Space appurtenant to the Lot, at a time.

Section 4.24 No Event Parking. No person including, but not limited to, Owners or occupants (which such terms shall include assignees, permittees or designees of each) of a Dwelling Unit, shall be permitted to charge a fee or collect or accept monies from a third party in exchange for permitting said third party to park any vehicle, of any nature whatsoever, anywhere on the Property.

Section 4.25 Additional Rules and Regulations. The Association shall have the authority to adopt such rules and regulations regarding this Article, as it may from time to time consider necessary or appropriate.

Section 4.26 No Implied Waiver. The failure of the Association, the ARC, or the Developer to object to an Owner or another Person's failure to comply with the covenants and restrictions contained herein shall in no event be deemed a waiver by the Association, or any other person having an interest herein, of its rights to object to the same and to seek compliance therewith in accordance with the provisions of this Declaration.

ARTICLE V MAINTENANCE

Section 5.1 Maintenance Responsibilities. Owners and Occupants of any Tract or Property in the Triangle shall, jointly and severally, have a duty and responsibility, at their sole cost and expense, to keep that part of the Triangle so owned or occupied, including buildings, roofs, improvements, landscaping and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (A) Removing promptly all litter, trash, refuse and waste;
- (B) Mowing of lawn no less often than when the grass is more than four (4) inches high. If the Property is unimproved, weeds must be kept cut below twenty-four (24) inches;
- (C) Pruning of trees and shrubbery;
- (D) Watering and fertilizing;
- (E) Keeping retention ponds free of weeds, trash and unsightly accumulations of algae or organic growth;
- (F) Keeping exterior lighting, signs and mechanical facilities in working order;
- (G) Keeping lawn and landscaped areas alive, free of weeds and attractive;
- (H) Keeping parking areas, driveways and roads in good repair;
- (I) Complying with all governmental, health, police and fire requirements, statutes and regulations;
- (J) Sealing of parking and driveway areas;
- (K) During construction, it shall be the responsibility of Tract Owner to ensure that construction sites are kept free of unsightly accumulations of rubbish and

scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner; and

(L) Keeping all site irrigation and drainage systems in good repair and working order.

Section 5.2 Enforcement. If, in the opinion of the Developer and/or Association, any such Owner or Occupant has failed in any of the foregoing duties or responsibilities, then the Developer and/or Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Developer and/or Association, through its authorized agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and Occupants for which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Developer and/or Association for such costs. If such Owner or Occupant shall fail to reimburse the Developer and/or Association within thirty (30) days after a receipt of a statement for such work from the Developer and/or Association, then said indebtedness shall be a debt of all said persons, jointly and severally, and shall constitute a lien against the Tract on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Article VIII and the Developer and/or Association shall have identical powers and rights in all respects including, but not limited to, the right of foreclosure.

Section 5.3 Access at Reasonable Hours. For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, at the reasonable notice to the Owner, to enter upon any Tract, Property or the exterior of any Improvements thereon at reasonable hours.

ARTICLE VI PROPERTY RIGHTS

Section 6.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of portion of the Property, subject to the following:

(A) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(B) All provisions of this Declaration, and plat of all or any part or parts of the Property and the Articles and By-laws of the Association;

(C) Rules and regulations governing use and enjoyment of the Common Area adopted by the Association;

(D) Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the Property.

Section 6.2 Permitted Operations and Uses. All of the building sites are intended to be used only for residential purposes. Any uses other than residential will require the written approval of the Association.

Section 6.3 Delegation of Use. Subject to such limitations as may be imposed by the By-laws, each Owner may delegate this right of enjoyment in and to the Common Area and facilities to invitees of Owner.

Section 6.4 Easements.

(A) Easements for installation and maintenance of any utilities and drainage facilities are shown on any recorded subdivision plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easement. The easement area of each Tract and all Improvements therein shall be continuously maintained by the Owner or such Tract, except for Improvements for maintenance of which a public authority or utility company is responsible.

(B) No Improvements, of any kind, shall be built, erected or maintained on any such easement, reservation or right of way, and such easements, reservations and rights of way shall, at all times, be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall be open and accessible to Declarant, all of which shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations and rights of way are reserved.

Section 6.5 Right of Entry. The Association, through its duly authorized employees and contractors, shall have the right, after reasonable notice, to the Owner thereof, to enter any Tract or other Property subject to this Declaration at any reasonable hour on any such inspections and/or maintenance as may be authorized herein.

Section 6.6 Non Partition. There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner or any other person acquiring any interest in the subdivision or any part thereof, seek judicial partition thereof.

**ARTICLE VII
ASSOCIATION**

Section 7.1 Membership. Every person or entity who is a record fee simple Owner of a Tract of Property in the Triangle, including the Developer at all times as long as it owns all or any part of the Property subject to this Declaration, shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. When one or more persons or entities holds fee simple title to any part of the Property, all such persons or entities shall be members, but voting power is limited as provided in the Articles. A membership shall be appurtenant to, and may not be separated from, the ownership of any Property.

Section 7.2 Voting. Voting rights in the Association shall be as are set forth in the Articles and By-Laws of the Association.

Section 7.3 Association Board. Until sixty-seven (67%) percent of the Triangle lots are sold by Developer to third parties, the Membership of the Board of Directors of the Association shall consist of the members of the Board of Directors of the Developer. Once sixty-seven (67%) percent of the Triangle lots are sold, the Membership of the Association shall elect the Board of Directors pursuant to the By-Laws of the Association.

ARTICLE VIII MAINTENANCE ASSESSMENTS

Section 8.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any portion of the Property (by acceptance of a deed for such portion of the Property, whether or not it shall be so expressed in any such deed or other conveyance), including any purchaser at a judicial sale, shall be deemed to covenant and agree to pay to the Association, any annual assessments or charges, and any special assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon, from the due date at the rate of fifteen percent (15%) per annum and a late payment charge, in the amount of five percent (5%) of any payment not made within five (5) days of the due date thereof, and costs of collection thereof (including reasonable attorney's fees), shall be a charge on the Tract and shall constitute a continuing lien upon the Tract(s) against which each assessment is made, and shall also be the personal obligation of the Owner. No Owner of a Tract may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment. No portion of any Property which does not constitute a Tract will be liable for any annual or special assessment under this section.

Section 8.2 Purpose of Assessment. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the health, beauty, safety, security and welfare of the Owners of the Triangle and in particular for the improvements and maintenance of the Common Areas and of any easement in favor of the Association and maintenance and beautification of public rights of way, if not maintained by a public body, including, but not limited to, the cost of taxes, insurance, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of, and undertaken by, the Association.

Section 8.3 Annual Assessments. Except as hereinafter provided, the annual assessment, excluding any special assessment, shall be set by a two third (2/3) vote of the Board of Directors of the Association. The amount of the annual assessment shall be determined by the Board of Directors in accordance with the projected financial needs of the Association. The decision of the Board of Directors of the Association as to such amount shall be final.

Section 8.4 Special Assessments. In addition to any annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board of Directors of the Association, including the necessary fixtures and personal property related thereto, or to make up the difference between actual operating costs and the annual assessment provided that any such assessment shall have the assent of a majority of the Tract Owners who are voting, in person, at a meeting duly called for this purpose, written notice of which shall be sent to all Tract Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 8.5 Uniform Rate of Assessment. All regular and special assessments shall be at a uniform rate for each square foot of land subject to this Declaration, exclusive of Common Areas. The percentage share applicable to each Tract shall be determined by dividing the square footage of such Tract by the total square footage of all Tracts in the Property, exclusive of Common Areas. This determination shall be made by the Developer and, if made in good faith, shall be binding on all parties.

Section 8.6 Date of Commencement of Annual Assessments, Due Dates. The assessments for which provision is herein made, shall commence on the date or dates (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The due date of any assessment shall be fixed in the resolution authorizing such assessments, and any such assessment shall be payable, in advance, in monthly, quarterly, semi-annually or annual installments as determined by the Board.

Section 8.7 Duties of the Board of Directors. At least thirty (30) days before an assessment due date, the Board of Directors of the Association shall determine the date of commencement and the amount of the assessment against each Tract for each assessment period. In addition, at such time the Board of Directors shall prepare a roster of the Tracts and assessment applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement. The Association shall upon demand, furnish to any Tract Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid.

Section 8.8 Repair Assessment. If in the process of construction upon any Tract or other Property, or in the making of any Improvement, the Owner, its agents or independent

contractors cause damage to any other Tract, Improvement, Common Area, dedicated roads or to any other Tract, Improvement, Common Area, dedicated roads or to any other Property owned by someone else with the Triangle, the Owner shall be responsible for such damage. If the Association, either voluntarily or involuntarily, makes repairs or otherwise cause the damage caused by the Owner, its agents or independent contractors, the Owner shall be obligated to reimburse the Association for all expenses the Association incurred in curing the damage. Such amounts shall be treated as a special assessment and the Association shall have rights and powers as provided in this Article.

Section 8.9 Effect of Non-Payment of Assessment: the Lien, the Personal Obligation, Remedies of Association. The Lien of the Association upon a Tract shall be effective from and after recording, in the Office of the St. Joseph County Recorder, Indiana, a Notice of Intention to Hold Lien stating the description of the Tract encumbered thereby, the name of the Owner, the amount and date when due. Such Notice of Lien shall include not only assessments which are due and payable when the Notice of Lien is recorded, plus interest, costs, and attorney's fees, advanced to pay taxes and prior encumbrances and interest thereon, but also such Notice of Lien shall include such additional assessments which accrue from the first non-payment to which the Notice of Lien relates to the entry of a judgment in favor of the Association with respect to such Lien. Such Notice of Lien shall be signed and verified by an office or agent of the Association. Upon full payment of all sums secured by such Notice of Lien, the same shall be satisfied of record. If the assessment is not paid within thirty (30) days after the delinquency date, which shall be set by the Board of Directors of the Association, the Assessment shall bear interest from the date due at the rate of fifteen (15%) percent per annum, and the Association may at any time thereafter, bring an action to foreclose the lien against the Tract(s) in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such assessment a reasonable attorneys' fee for the prosecution of such a suit.

Section 8.10 Subordination to Lien of Mortgages. The lien of the Assessment for which provision is herein made, as well as in any other Article of this Declaration, shall be subordinate to the lien of any first mortgage to a federal or state chartered bank, life insurance company, federal or state saving and loan association, real estate investment trust, retirement fund or institutional mortgage company. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Tract pursuant to a decree of foreclosure of such mortgage. No sale or transfer shall relieve any Tract from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any questions of subordination.

ARTICLE IX REPURCHASE RIGHTS OF DEVELOPER

Section 9.1 Right to Repurchase if No Construction. If, after one (1) year from the date of a sale of any Tract within the Triangle, any Owner shall not have begun in good faith the construction of an accepted and approved building upon such site, the Developer, at its option,

may require the Owner to reconvey the Tract to this Developer, free and clear of all encumbrances except this Declaration. The repurchase price shall be the price paid by the Owner for the Tract, when purchased from the Developer, less any unpaid balances of any liens, mortgages, or encumbrances owed the Developer or the Association. The Developer shall give thirty (30) days written notice of intent to repurchase. In the event the Owner refuses or fails to reconvey the Tract, the Developer may seek specific performance of this covenant by filing an action in a court of competent jurisdiction. The Developer may also recover its court costs and reasonable attorney's fees in enforcing this provision.

Section 9.2 Developer's Right of First Refusal on Transfer of Unimproved Tracts.

In addition to the Developer's rights under Section 9.1, and regardless of the length of time of Ownership of the Tract or other Property, no Tract or other Property and no interest herein, upon which a building has not been constructed shall be sold or transferred unless and until the Owner of such Tract or Property has given notice of such sale or transfer to Developer and Developer has waived, in writing, its right to repurchase said Tract or Property. This is to be accomplished in the following manner:

(A) Any Owner intended to make a bona fide sale of its Tract or other Property or any interest therein, shall give to the Developer, notice of such retention, together with a fully executed copy of the Proposed Contract of Sale (the "Proposed Contract"). With thirty (30) days of receipt of such notice and information, Developer shall either exercise, or waive exercise of, its right of first refusal. If Developer elects to exercise its right of first refusal, it shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner, an agreement to purchase the Tract or Property upon the following terms:

- (1) The price to be paid and the terms of payment shall be that stated in the Proposed Contract; and
- (2) The sale shall be closed within thirty (30) days after the delivery or making of said Agreement to Purchase.

If the Developer shall fail to exercise or waive exercise of its right of first refusal within the said thirty (30) days of receipt of the Proposed Contract, Developer's right of first refusal shall be deemed to have been waived and Developer shall furnish a certificate of waiver as herein provided in subsection (B).

(B) If the Developer shall elect to waive its right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, the Developer's waiver shall be evidenced by a certificate executed by the Developer in recordable form which shall be delivered to the Proposed Contract purchaser and may be recorded by the Owner in the Office of the St. Joseph County Recorder, Indiana.

(C) This section shall not apply to any transfer to or sale by any national or state bank, life insurance company, federal or state savings and loan association, real estate

investment trust, retirement fund, or institutional mortgage company which acquires its title as a result of owning a mortgage upon the Tract concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings. This section shall also not apply to any sale by any such institution which so acquires title. Neither shall this section require the wavier by Developer as to any transfer of tile to a Tract or Property at a duly advertised public sale with open bidding which is provided by law such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale or any Tract upon which a building has been constructed and for which a certificate of occupancy has been issued therefore.

ARTICLE X DEVELOPER'S RESERVED RIGHTS TO PROPERTY

Section 10.1 Extension of Covenants and Restrictions to Include Additional Property. The Developer may, at any time, make subject to these Protective Covenants and Restrictions other property now or hereafter owned by the Developer by executing an instrument in writing applying these Covenants and Restrictions to such other properties and by recording the instrument in the Office of the St. Joseph County Recorder, Indiana.

Section 10.2 Withdrawal of Land. Developer may, but shall have no obligations to, withdraw at any time or from time to time portions of the land described in Exhibit A provided only that the withdrawal of lands, as aforesaid, shall not, without the joinder of consent of a majority of the members of the Association, materially increase the pro rata share of expenses of the Association payable by the Owners remaining subject hereto after such withdrawal. The withdrawal of lands, as aforesaid, shall be made and evidenced by filing in the Office of the St. Joseph County Recorder, Indiana, as supplementary Declaration with respect to the lands to be withdrawn. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner or mortgagee of land in the Triangle.

Section 10.3 Platting and Sub-Division Restrictions. The Developer shall be entitled, at any time and from time to time, to plat or replat all or any part of the Property, and to file subdivision and restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property.

Section 10.4 Public Roads-Easements. The Developer reserves the right, from time to time hereafter, to delineate, plat, grant or reserve within the remainder of the Triangle not hereby conveyed, such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities as it may deem necessary or desirable for the development the Triangle (and from time to time to change the location of the same) free and clear of these Covenants and Restrictions and to dedicate the same to public use or to grant the same to any governing municipal or regulatory authority, including any appropriate public utility corporations.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1 Term. This Declaration, or any provision hereof, and every covenant, condition, restriction and Reservation contained herein shall continue in full force and effect for a period of twenty-five (25) years from the date hereof, and shall thereafter be renewed automatically for successive five (5) year periods unless or until terminated as provided in Section 11.3 hereof.

Section 11.2 Indiana Law. This Declaration, or any provision hereof, shall be interpreted and enforced according to the laws of the State of Indiana.

Section 11.3 Termination and Modification. This Declaration, or any provision hereof, or any covenant, condition, or standard contained herein, may be terminated, extended, modified or amended as to the whole of said Property or any portion thereof, with the written consent of the Owners of sixty-seven (67%) percent of the Property subject to these Covenants and Restrictions (excluding mortgagees and the holders of other securities devices who are not in possession; provided, however, that so long as Developer owns at least twenty (20%) percent of the Property subject to these Covenants and Restrictions, no such termination, extension, modification or amendment shall be effective without the written approval of Developer thereto. No such termination, extension, modification or amendment shall be effective until a proper instrument, in writing, has been executed and acknowledged and recorded in the Office of the St. Joseph County Recorder. No such termination, extension, modification or amendment shall affect any plans, specifications or use therefore approved by Developer or the ARC under Article III hereof or any improvements theretofore or thereafter made pursuant to such approval.

Section 11.4 Assignment of Developer's Rights and Duties. Any and all of the rights, powers and reservations of the Developer herein contained may be assigned to any person, corporation or association which will assume the duties of the Developer pertaining to the particular rights, powers, and reservations assigned, and upon any such person, corporation or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Developer herein. If at any time the Developer ceases to exist and has not made such an assignment, a successor Developer may be appointed in the same manner as these Covenants and Restrictions may be terminated, extended, modified or amended hereunder. The Developer may, from time to time, delegate any or all of its rights, powers, discretion and duties hereunder to such agent. It may also permanently assign any or all of its powers and duties (including discretionary powers and duties) obligations, rights, title, easements and estates reserved to it by this Declaration to any one or more corporations, associations or persons that will accept the same. Any such assignment shall be in writing and recorded in the Office of the St. Joseph County Recorder and the assignee shall join therein for the purpose of evidencing its acceptance of the same. Such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to the Developer and the Developer shall automatically be relieved from such responsibility.

Section 11.5 Mutually, Reciprocity, Runs with the Land. All covenants, restrictions, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Tract and other Property in favor of every other Tract and other Property; shall create reciprocal rights and obligations between all grantees of said Tract and other Property, their heirs, successors, personal representatives and assigns; and, shall, as to the Owner of each Site, his heirs, successors, personal representatives and assigns, operate as a covenant running with the land for the benefit of all other sites.

Section 11.6 Benefits and Burdens. The terms and provisions contained in this Declaration of Protective Covenants and Restrictions shall bind and inure to the benefit of the Declarant, the Owners of all building sites located within the Property, the Owners of additional Property made subject to this Declaration of Protective Covenants and Restrictions and their respective heirs, successors, personal representatives and assigns. The Developer, any Owner, and Association through its agents, shall have the right to enforce the terms and conditions contained in this Declaration of Protective Covenants and Restrictions, and to collect all costs of enforcing the terms and provisions of the Covenants and Restrictions against the offending Party including but not limited to reasonable attorney fees incurred whether before an actual cause of action is filed or at any stage afterwards.

Section 11.7 Notices. Any notice required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested and shall be directed as follows: if intended for a building site Owner (i) to the address of the Building Tract, if improved; (ii) if the Building Tract is not improved, to the address set forth in the Purchase Contract; or (iii) if none of the foregoing, to the last known address of the Owner. If intended to Declarant, to the address as set forth herein.

Section 11.8 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 11.9 Failure to Enforce Not a Waiver of Rights. Any waiver or failure to enforce any provisions of these Covenants and Restrictions in a particular situation, shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location of the Triangle or of any provision of these Covenants. The failure of Developer, Association, or any Tract Owner to enforce any covenants or restrictions herein contained, shall in no event be deemed to be waiver of the right to do so thereafter or of the right to enforce any other covenant or restriction.

Section 11.10 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of said Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained in the instrument by which such person acquired an interest in said Property.

Section 11.11 No Waiver. All of the conditions, covenants, restrictions, and reservations contained in this Declaration of Protective Covenants and Restrictions shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions and reservations, or any part thereof is invalid, or for any reason, becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

Section 11.12 Captions. The captions, section numbers and Article numbers appearing in these Protective Covenants and Restrictions are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or Articles of these Protective Covenants and Restrictions nor in any way modify or affect these Protective Covenants and Restrictions.

Section 11.13 Severability. Invalidation of any one of these covenants and restrictions or portion(s) thereof by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

(SIGNATURE PAGE FOLLOWS)

EXHIBIT A
LEGAL DESCRIPTION

Legal Description

A PART OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 3 EAST, CITY OF SOUTH BEND, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT NUMBER 19 OF "HARTMAN AND WOODWORTH'S PLAT", THE PLAT OF WHICH IS RECORDED IN PLAT BOOK #7, PAGE #30 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE ALONG THE EAST LINE OF SAID LOT NUMBER 19, S. 00°21'11" E., 196.76 FEET TO THE INTERSECTION OF THE EXTENSION OF SAID EAST LINE WITH THE CENTERLINE OF SOUTH BEND AVENUE (A.K.A. STATE ROAD 23); THENCE ALONG SAID CENTERLINE, S. 51°05'04" W., 1010.75 FEET TO THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF GEORGIANA STREET; THENCE ALONG SAID CENTERLINE OF GEORGIANA STREET, N. 00°20'40" W., 123.04 FEET TO A POINT OF INTERSECTION OF SAID CENTERLINE WITH THE SOUTH LINE OF LOT # 47 OF THE PLAT OF SAID "HARTMAN AND MILLERS" SUBDIVISION EXTENDED EAST; THENCE S. 89°44'21" W., ALONG SAID EASTERLY EXTENSION AND SOUTH LOT LINE EXTENSION OF LOT # 47, 142.96 FEET TO A POINT ON THE WEST LINE OF SAID LOT AND THE EAST LINE OF A 12 FT. WIDE PUBLIC ALLEY; THENCE ALONG THE EAST LINE OF SAID PUBLIC ALLEY, N. 00°20'40" W., 212.31 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF LOT # 43 IN SAID PLAT; THENCE N. 89°44'21" E. ALONG SAID NORTH LINE AND ITS EASTERLY EXTENSION, 142.96 FEET TO THE CENTERLINE OF SAID GEORGIANA STREET; THENCE ALONG SAID CENTERLINE 650.03 FEET TO A POINT ON SAID CENTERLINE AND WESTERLY EXTENSION OF THE NORTH LINE OF LOT NUMBER 70 OF "HARTMAN AND MILLERS" PLAT WHICH IS RECORDED IN PLAT BOOK #7 PAGE # 29, IN THE OFFICE OF THE RECORDER OF SAID COUNTY; THENCE ALONG THE NORTH LINE OF LOT NUMBER 70, N. 89°50'18" E., 621.17 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF DUEY AVENUE, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT #10 OF SAID "HARTMAN AND WOODWORTH'S PLAT"; THENCE ALONG THE EAST LINE OF SAID DUEY AVENUE FOR THE NEXT THREE (3) COURSES, N. 00°19'30" W., 80.00 FEET AND N. 89°50'18" E., 11.69 FEET AND N. 00°38'49" E., 46.91 FEET TO THE SOUTH LINE OF NAPOLEON STREET; THENCE S. 89°21'11" E., 117.11 FEET TO A POINT OF INTERSECTION OF SAID LINE WITH THE EAST LINE OF A 12 FT. PUBLIC ALLEY EXTENDED NORTH; THENCE ALONG THE EAST LINE OF SAID ALLEY AND ITS NORTHERLY EXTENSION, S. 00°20'46" E., 278.62 FEET TO A POINT AT THE NORTHWEST CORNER OF LOT NUMBER 19 OF SAID "HARTMAN AND WOODWORTH'S PLAT"; THENCE ALONG SAID NORTH LINE, N. 89°54'51" E., 39.29 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM: LOTS # 79 AND #80 OF THE PLAT OF "HARTMAN AND MILLERS" SUBDIVISION WHICH IS RECORDED IN PLAT BOOK #7 PAGE # 29, IN THE OFFICE OF THE RECORDER OF SAID COUNTY.

CONTAINING 12.84 ACRES MORE OR LESS AND COMPRISED OF FIFTY-THREE (53) LOTS AND THREE (3) OUTLOTS.

SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

EXHIBIT B

BY-LAWS

[By-Laws will be inserted here]

EXHIBIT C

ARCHITECTURAL GUIDELINES

[Architectural Guidelines will be inserted here]

EXHIBIT D

EXAMPLE HOUSE MODEL DESIGNS

[Example House Model Designs will be inserted here]