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STATE OF INDIANA
PORTER COUNTY
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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

TIMBERLAND FARMS SUBDIVISION

*THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR
TIMBERLAND FARMS SUBDIVISION* ("Declaration") made this 19th day of
APRIL, 2010 by Timberland Farms, LLC, an Indiana limited liability company
("Developer" or "Declarant"). 2010-007831 PLAT FILE 50-A-3A

WITNESSETH

Whereas, the Developer is the owner of the real estate legally described herein and commonly known as Timberland Farms Subdivision ("Subdivision"); and

Whereas, the Developer desires the Subdivision to develop as a residential community; and

Whereas, the Developer desires to promote the orderly development of the subdivision and to provide for the maintenance of common area by subjecting the real estate owned by the Developer to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the subdivision and real estate comprising the development; and

Whereas, the Developer deems it desirable to subject the real estate to the said covenants, restrictions, conditions, reservations, easements, charges and liens for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the subdivision.

NOW THEREFORE, the Developer hereby declares that all of the platted lots and real estate located within the Subdivision as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the said lots situated therein.

Article I

DEFINITIONS

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

Section 1. "Association" shall mean and refer to Timberland Farms Homeowners Association, Inc., an Indiana not for profit corporation.

Section 2. "Board" shall mean the Board of Directors of the Association.

Section 3. "Committee" shall mean the Architectural Control Committee for the Subdivision which is created and shall have the authority and duties as provided for herein.

Section 4. "Common Area" shall mean all real estate, whether in one or more separate parcels, which the Association or the Developer owns for the non-exclusive common use and enjoyment of the Owners of Lots shown on the recorded Subdivision plat or plats.

Section 5. "Developer" or "Declarant" shall mean Timberland Farms, LLC, an Indiana limited liability company, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of the Subdivision, from the Developer for the purpose of development.

Section 6. "Lot" shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a residential structure could be constructed, whether or not one has been constructed.

Section 7. "Maintenance" shall mean the exercise of reasonable care of all buildings, easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

Section 8. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including the Developer, and including contract sellers, but not including contract purchasers.

Section 9. "Member" shall mean every person or entity holding membership in the Association.

Section 10. "Subdivision" shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section 1.

Article II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERE TO, DELETIONS THEREFROM

Section 1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Porter County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

The South Half of the Northeast Quarter of the Northeast Quarter of
Section 23, Township 36 North, Range 6 West, containing 20 acres,
more or less.

Section 2. Platting and Subdivision Restrictions. The Developer shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

Section 3. Additional Real Estate. Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous (contiguity shall expressly include, but not be limited to, property separated by easements or road right of way) to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as single family residential lots, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Common Area of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their prorata share of Association expenses. The addition at any time or from time to time of all or any portion or portions of the real estate to the scheme of this

Declaration shall be made and evidenced by filing in the Office of the Recorder of Porter County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in the Subdivision.

Section 4. Retractable Real Estate. At the sole election of the Developer, all of the real estate specifically described in Section 1 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions thereof at different times; provided, however that no real estate may be withdrawn which has been developed. All Owners, mortgagees and the Association are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of any portion of the plat of the Subdivision not developed in which the Developer has withdrawn from this Declaration.

Section 5. Easements. There are platted on the plat of the Subdivision certain easements which shall be and are hereby reserved for the installation, construction, maintenance, repair or replacement of any and all public utilities and drainage and their poles, ducts, wires, pipelines, lines, conduit, sewers, manholes or other related utility or drainage facility. No permanent structure shall be erected or allowed to be maintained on any easement. No Owner shall grant an easement, license or permit others to use any Lot, or portion thereof, in the Subdivision for access to any property or real estate not located within the Subdivision. No obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains is permitted, except that Developer and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use or enjoyment of any Lot without the Owner's consent. No Owner shall remove or disturb the vegetative plantings installed by the Developer for the filtering of storm water within the Subdivision.

Section 6. Damon Run Conservancy District. Each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to acknowledge, understand, covenant and agree (i) that the Subdivision is a part of the Damon Run Conservancy District ("District") and it has been disclosed to said Owner the Subdivision is a part of the District, and (ii) to comply with all terms, conditions, rules and regulations of the District, including, but not limited to, the Owner at its sole cost and expense paying all fees, charges, taxes, assessments and costs imposed by the District or otherwise associated with being a freeholder in the District and obtaining utility service from the District. No Lot in the Subdivision may be serviced by any utility service company or entity other than the District if the District provides the same service.

Section 7. County Unified Development Standards Requirements.

- A. Water Service Standards. Should any portion of the Subdivision be serviced at any time with private wells, Porter County shall not now or at any time in the future be obligated to provide, furnish or have any liability for fire protection that could have been provided by the public water supply.

B. Tree / Shrub Maintenance.

- (i) The owner or person in control of the dominant real estate adjacent to the area between the street and the sidewalk and/or right-of-way line on which any tree or shrub is planted pursuant to the requirements of the Unified Development Ordinance (“UDO”) shall be responsible for the maintenance, removal and/or replacement of the tree or shrub, as necessary.
- (ii) If after notice from the County, the owner or person in control fails to maintain, remove and/or replace a dead tree or shrub or any dead or dangerous limbs or branches thereon, the County may remove said tree, shrub or limbs and collect the costs thereof from the owner or the person in control pursuant to Chapter 11: Enforcement and Penalties set forth in the UDO.
- (iii) So long as the property is not located within the limits of any town or municipality, the County retains ownership of the area within the right-of-way and retains the right to reasonably remove any tree or shrub impeding necessary work to be performed by the County and/or all public utilities or other properly authorized users.
- (iv) Neither the County nor any public utility or other properly authorized user of the County’s property located between the street and the sidewalks and/or right-of-way line shall be liable to the owner of the dominant real estate for any damages done to trees or shrubs located upon the County property between the street and the sidewalk and/or right-of-way line as a result of actions of the County or any public utility or other authorized user or their agents or employees in the performance of their duties.

C. **Contractual Obligations.** Prior to turning control of the Association over to the Lot or unit Owners, the Developer shall not enter into any contractual relationship on behalf of the Association that exceeds a period of two (2) years. Once the Association is under the Lot or unit Owners’ control, the renewal of such a contract shall be at the discretion of the Association Board of Directors.

Article III

PROPERTY RIGHTS

Section 1. Title to Common Area. The Developer shall be turn the Common Area, amenities and other facilities over to the Association before two-thirds (2/3) of the Lots are sold. The Developer shall convey the Common Area to the Association subject to taxes for the year of conveyance and to restrictions, conditions, limitations, reservations and easements of record; subject, however, to a reservation hereby perpetually reserved to the Developer, its successors and assigns,

of the non-exclusive right to use and enjoy the common utility easements, easements of drainage, and ingress and egress easements for the benefit of real estate owned and to be owned by the Developer located on real estate which is contiguous to the Subdivision.

Section 2. Owners' Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive common right and easement of enjoyment and ingress and egress in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

- A. The right of the Association to take such steps as reasonably necessary to protect the above-described properties against foreclosures;
- B. All provisions of this Declaration, any 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 the 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; and
- E. Easements as shown on the recorded plat of the Subdivision. Within these easements, no structure, planting other material 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, impede, or change the direction of flow of drainage facilities in the easements. The easement areas shown on each Lot and all improvements thereon shall be continuously maintained by the Owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible. No dwelling unit or other structure of any kind shall be built or 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 also be open and accessible to Developer, its successors and assigns of the right to use and enjoy the same non-exclusive easements, for the benefit of additional real estate owned or later acquired by Developer located or real estate contiguous to the Subdivision.

Section 3. Right of Entry. The Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.

Section 4. No Partition. There shall be no judicial partition of the Common Area, nor shall Developer, or any Owner or any other person acquiring any interest in the Subdivision, or any part thereof, seek judicial partition thereof of the Common Area. However, nothing contained herein

shall be construed to prevent judicial partition of any Lot owned in cotenancy.

Article IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Purpose of the Association. The primary purpose of the Association shall be to insure high standards of maintenance and operation of all property and real estate in the Subdivision, including that property reserved by the Developer for the detention and management of storm water easements, to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. In addition, the Association shall consider its primary purpose to manage and support financially all real estate owned by the Association, if any, as well as the storm drainage detention structures, appurtenances and easements located within the Subdivision.

Section 2. Creation of the Association. As soon as is practicable following the recordation of this Declaration, but prior to 2/3rds of those Lots which have been subjected to this Declaration have been sold and title has been conveyed from the Developer to an Owner, the Developer shall cause the Association to be incorporated as an Indiana Not-for-Profit Corporation. Prior to the appointment of the Board of Directors by the Developer, responsibility for the control of the Association shall remain the exclusive responsibility and obligation of the Developer or its designated agents and employees.

Section 3. Membership. Every Owner, including the Developer, at all times so long as the Owner owns all or any part of the property subject to this Declaration, shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

Section 4. Classes and Voting. The Association shall have such classes of membership, which classes shall have such voting rights, as are set forth in the Articles of Incorporation.

Section 5. Board of Directors. The Association shall have a Board of at least three (3) Directors who shall constitute the Board of Directors.

- A. The Directors and Officers of the Association shall not be liable to any Owner for any mistake of judgment or any acts or omissions made in good faith by such Director or Officer. The Owners shall indemnify and hold harmless each of the Directors or Officers against all liability arising out of contracts made by such Directors or Officers on behalf of the Owners and Members of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration.
- B. The Board shall have the authority to and shall obtain comprehensive public liability

insurance, as it shall deem desirable, and other liability insurance or insurances as it may deem appropriate in the circumstances. The premiums for such insurance shall be an expense to be paid by the Association.

Section 6. Powers and Duties of the Association. The Board of Directors of the Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law in this Declaration:

- A. To own, maintain and otherwise manage the storm drainage detention basins and facilities located within the Subdivision and vacant and unimproved property, if any, and to do any and all other things necessary or desirable in the sole judgment of the Officers or Directors of the Association.
- B. To care for and maintain the open space, common areas, landscaping, plantings and signs located within the Subdivision in a good and neat appearance and in compliance with the approved plat of the Subdivision.
- C. To make such improvements to the facilities under its control within the Subdivision, and to provide such other facilities and services as may be authorized from time to time by the affirmative vote of a simple majority of the Members of the Association acting in accordance with its constitution and Bylaws provided, however, that any such actions so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable and exclusive residential community.
- D. Until such time as the Board of Directors is duly elected, all the powers and duties enumerated above shall be exercised exclusively by the Board of Directors, as appointed by the Developer. The Developer, at Developer's discretion may appoint Owners to serve on the Board of Directors at such time as it deems appropriate. The first elected Board shall be elected prior to 2/3rds of those Lots which have been subjected to this Declaration have been sold and title has been conveyed from the Developer to an Owner. All Owners of record who have been subjected to this Declaration shall be eligible to vote for said Board. All Directors of the first elected and all subsequent Boards of Directors of the Association, shall be nominated and elected pursuant to the Bylaws of the Association.

Article V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessment. Each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or

other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair; such 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 ten (10%) per cent per annum, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge on the real estate and shall be a continuing lien upon the Lot or Lots against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment, or otherwise.

Section 2. Purpose of Assessment. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision, including but not limited to the following:

- A. Improvement, maintenance and repair of the Common Area;
- B. Water, sewer, garbage, electrical lighting, telephone, gas and other necessary utility services for the Common Area;
- C. Maintenance and repair of all storm drains, drainage easements, storm water detention or retention easements, sanitary sewers, open space, parks, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Porter County, Indiana.
- D. Fire insurance covering the full insurable replacement value of all improvements located on the Common Area with extended coverage;
- E. Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner arising out of their occupation and/or use of the Common Area. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;
- F. Worker's compensation insurance to the extent necessary to comply with the Indiana law, and any other insurance deemed necessary by the Board;
- G. Acquisition of furnishings and equipment for the Common Area as may be determined by the Association, including without limitation, all equipment, furnishings, and personnel necessary or proper for use of the Common Area.
- H. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration, or by law,

or which shall be necessary or proper in the opinion of the Board for the operation of the Common Area, for the benefit of the Owners, or for the enforcement of these restrictions.

Section 3. Annual Assessments. The initial annual assessment for the year 2008 shall be Two Hundred Fifty Dollars (\$250.00) per Lot. Thereafter, the Board shall fix the assessments, which shall be in amounts determined in accordance with the projected financial needs of the Association as to which the decision of the Board shall be dispositive.

Section 4. Uniform Rate of Assessment. All regular and special assessments shall be at a uniform rate for each Lot in the Subdivision without adjustment for size of Lots, number of residents or use or non-use of the Common Area.

Section 5. Developer Exemption for Assessments. The Developer shall not be responsible or liable for any assessments on Lots owned by Developer and held as inventory prior to sale to another Owner. In the event that the Developer owns any Lot that is improved with a residential dwelling that is occupied as a residence, the Developer shall then be obligated to pay assessments levied against the Lot with assessments commencing on the date of occupancy.

Section 6. Special Assessments for Capital Improvements and Major Repairs. In addition to the annual assessment, 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, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-third (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

Section 7. Date of Commencement of Annual Assessments: Due Date. The assessments for which provision is herein made shall commence on the first day of the month, or as fixed by the Board to be the date of commencement; provide, however that the first annual assessment for each Lot shall be paid in full at closing on the Lot by the initial purchaser of such Lot which assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, the due date of any assessment shall be payable in advance in monthly installments unless such other periods are determined by the Board.

Section 8. Duties of the Board of Directors. The Board shall fix the date of commencement, and the amount of the assessment against each Lot for each assessment, at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. 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 thereof. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said

assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: The Lien, Personal Obligation, Remedies of Association. If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner's heirs, devisees, personal representatives and assigns, and shall also be continuing personal obligation of the Owner against whom the assessment is levied.

If the assessment is not paid within thirty (30) days after the delinquency date the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of such assessment the cost of any such action (including a reasonable attorneys' fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

Section 10. Subordination to Lien of Mortgages. The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No such sale or transfer or proceeding in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessments thereafter becoming due, nor from the lien of any 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 question of subordination.

Article VI

EXTERIOR MAINTENANCE ASSESSMENT

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, down-spouts, exterior building surfaces, and yard clean-up and/or maintenance; provided, however, that ten (10) days written notice must first be given to the Owner of any such Lot or Lots of the need of such clean-up and/or maintenance. In the event the Owner does not undertake and complete the work within ten (10) days of receiving the notice, the

Declarant, Association or the Board may undertake all reasonable and necessary work and charge the Owner three (3) times the actual cost of the clean up. Failure to pay upon request will result in a lien and/or specific assessment against the Lot.

Section 2. Assessment of Cost. The cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed, or, in the opinion of the Board, against the Lot or Lots benefitting from same. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney's fees, and cost of collection, as provided for the other assessments of the Association and shall be subordinate to mortgage liens as provided for herein.

Section 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, after reasonable notice to the Owner, to enter upon any Lot or Lots or the exterior of any improvements thereon at reasonable hours any day except Sunday.

Article VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Power of Committee. There is hereby created an Architectural Control Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Developer or its agent shall function as the Committee and shall have the power to grant all approvals and variances provided for in this Article until such time as the Developer conveys the last Lot which Developer owns in the Subdivision or until construction of a single family residence has been commenced on each Lot in the Subdivision, whichever is later to occur. After turnover by the Developer of its right to act as the Committee to the Members of the Association, the Committee shall be composed of no less than three (3) individuals appointed by the Board to serve at the Board's pleasure, of which two-thirds (2/3rds) of the Committee shall also be Members of the Association. A majority of members of the Committee shall constitute the decision of the Committee. Notwithstanding anything to the contrary herein, the Developer may elect to delegate and assign its role and rights as the Committee at any time.

A. **In General.** No dwelling, house, building, structure, fence or improvement of any type or kind shall be constructed or placed on any Lot in the Subdivision without the prior approval which shall be obtained only after written application and payment of application fee, if any, 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 proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, the elevation of all improvements, each properly and clearly designated. In addition, such plans and specifications shall include a landscaping plan, 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 1" - 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required elsewhere in these Restrictions.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when in its sole discretion the Committee finds:

(i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;

(ii) The design, including site drainage and landscaping, color scheme or construction materials of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(iii) 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. Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Subdivision.

Section 2. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. Should the Committee fail to act within the specified time, the requirements of this Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all 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 the disapproval.

Section 3. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, nor the Association, 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.

Section 4. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

Section 5. Construction Rules and Regulations

- A. Builder Responsibility. It shall be the responsibility of the Owner or the Owner's builder to comply with all construction regulations contained herein. If any builder or contractor is found deficient in the performance of any of these construction requirements, the Developer or the Committee reserves the right to take any corrective action necessary, including the right to deny any contractor access to the Subdivision. A current list of all subcontractors and their contact information shall be provided to the Developer throughout construction of a home on a lot.
- B. Access to the Homesite/Contractor Parking. Individual Lots shall be accessed only via the streets. No other access will be permitted. Access onto the Lots from the street shall be restricted to the driveway curb cut. The curb cut, and sidewalk cut, if necessary, shall be located by the surveyor, then cut and the access leveled with gravel fill prior to any vehicular traffic or construction is permitted on the Lot. The gravel drive shall consist of a minimum of two (2) loads of stone and shall run from the curb to the foundation at the garage entry. The driveways of homes under construction and any area available for parking are to be kept stoned for access by suppliers and parking for contractor's vehicles. All vehicles shall be parked within the Lot boundaries whenever possible. If the Lot driveway is occupied, parking on one side of the road will be allowed. Street parking will only be allowed when parking on the Lot is impossible. Construction equipment may be left on site while needed, but must be kept on the Lot.
- C. Delivery and Storage of Materials. Delivery of supplies and equipment shall be limited to normal hours of operation. Supplies and equipment shall be unloaded promptly and in an orderly fashion. Delivery vehicles shall exit the Lot and Subdivision immediately after delivery. The delivered equipment or materials shall immediately be stored in an orderly manner within the Lot boundaries. The storage of materials and supplies shall be confined within the Lot boundaries of the specific Lot. Such materials and supplies are to be maintained in a neat and orderly manner and, whenever possible, located in the rear of the residence. Such stored materials shall not under any circumstances be permitted to obstruct the flow or drainage patterns of the Lot or any adjacent Lots.
- D. Lot Maintenance. The builder shall be required to keep the entire Lot clean at all times. Each Lot shall have a dumpster for refuse during construction. All debris and refuse shall be deposited into the dumpster. Debris is not to be allowed to accumulate on the Lot. The dumpster shall not be allowed to fill to the point of overflowing. If the Owner or Builder fails to clean the site at the end of the day, the

Developer or Association may enter the site to effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot. The burning of construction debris or of removed landscape material is prohibited.

Erosion control methods shall be in place on each Lot prior to and throughout any construction on a Lot. Silt fences shall be installed and maintained on all property lines to minimize erosion and flow of silt to adjacent property and street. Care should be taken to minimize excessive drainage onto the roadway and adjacent lots, including sump pump discharge and natural drainage. If the Owner or builder fails to clean the street at the end of the day, the Developer or Association may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

The washing or cleaning of concrete delivery trucks, shall be confined to within the Lot boundaries. Such activities shall not be permitted on any street and not on any other Lot or parcel within the Subdivision. If any party associated with the construction of or development of a Lot fails to comply, the Developer or Association may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

- E. Insurance. Each Owner shall require that all builders provide and maintain the following insurance policies at all times while performing any work in Subdivision, and the amount of these policies may be amended by the Developer or Committee from time to time.

Workmen's Compensation Insurance	Statutory limits
Comprehensive General Liability	\$2,000,000
Owner's and Builder's Protective Liability	*Based on contract price
Automobile Liability Insurance	\$1,000,000

All builders are required to submit current copies of these coverages to the Committee. The Developer shall be named as an additional insured on the builder's insurance and shall at all times maintain a current certificate of insurance on file with the Developer.

The Owner or Owner's builder and contractor and all subcontractors shall be responsible for any and all injuries or damage to any persons or property, including loss of human life arising directly or indirectly from or in connection with work performed or to be performed under this Declaration, and shall hold the Developer and its agents harmless of any and all loss or damage from such injuries, damage or death.

The Owner and Owner's builder and contractor and all subcontractors further agrees to maintain such insurance as will fully protect Developer and its agents from any and all claims under any Worker's Compensation Act, Employer Liability Laws, and from any and all other claims of whatsoever kind and nature for the damage to property or for personal or bodily injury including death, made by anyone whatsoever, which may arise from the operation carried on under this Declaration, either by the Developer, owner, contractor or subcontractor or by anyone directly or indirectly or indirectly engaged or employed by either of them.

Article VIII

USE RESTRICTIONS

Section 1. Residential Use. The real estate subject to these covenants and restrictions may be used for single family residential living units and for no other purpose. There shall be no more one (1) principal dwelling on any one (1) Lot. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvements shall be erected upon any Lot without prior approval of the Committee as elsewhere herein provided. No accessory building shall be erected prior to erection of the principal dwelling or house.

A. Subdivision of a Lot. No Lot shall be divided, subdivided or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous Lots under one ownership. In the event of the division or subdivision of any Lot as aforesaid, which results in the division of more than ten (10%) percent of any one Lot, the obligation for Association expenses attributable to the divided or subdivided Lot shall be and become proportionately attributable and chargeable to the contiguous Lot or Lots, and the Owner or Owners thereof, to and with which all or portions of the divided or subdivided Lot or Lots become consolidated.

B. Consolidation of Two or More Lots. In the event that one or more Lots are developed as a unit, the provisions of these covenants and restrictions with the exception of assessments shall apply thereto as a single Lot. No dwelling or other structure or improvement shall be erected, altered, placed, or permitted to remain on any site not including at least one (1) full platted Lot according to the recorded plat or plats of the Subdivision.

Section 2. Temporary Buildings and Accessory Structures. No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures ("Accessory Structures") shall be erected or permitted to remain on any Lot or in the Common Area without the written consent of the Committee. No Accessory Structure shall exceed eighty (80) square feet. All approved Accessory Structures shall have siding, fascia doors and roofing materials and colors used in substantially the same proportion as utilized on the primary dwelling structure constructed on the Lot, to ensure that the appearance of the Accessory Structure is substantially similar to the primary dwelling. All

Accessory Structures shall be located on a concrete pad with a minimum thickness of four (4) inches. Prior to the commencement of any construction or placement of any Accessory Structure on the Lot, the Owner or its agent shall submit detailed plans for the same to the Committee for its review consistent with the provisions of Article VII of the Declaration.

Section 3. Boats and Motor Vehicles. No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot in front of the building line, in the Common Area or in the driveway for no more than twenty four (24) hours from placement at any one time, nor shall any maintenance or repair be performed on the same except within a fully enclosed building and isolated from public view.

Section 4. Trees. Each Lot must have at least two (2) trees a three (3) inch diameter or greater growing upon said Lot in the front yard and at least two (2) trees a three (3) inch diameter or greater growing upon the parkway or right-of-way adjacent to the front yard of said Lot at the time an occupancy permit for the dwelling on such Lot is issued. Prior to the planting of any tree on a Lot, the Owner or its agent shall submit sufficiently detailed landscaping plans to the Committee for its review consistent with the provisions of Article VII of the Declaration. No tree shall be planted without the prior written consent of the Committee. Each Owner is solely responsible to contact all utility companies or service providers prior to planting trees or shrubs on the Lot. No tree or shrub, the trunk of which exceeds four (4) inches in diameter, shall be cut down or otherwise destroyed without the prior express written consent of the Committee. Tree diameter shall be measure at a point three (3) feet above grade adjoining the tree. No tree shall be planted on any Lot without the prior approval of the Developer.

Section 5. Automobile Storage Areas. All homes erected upon a Lot shall have a garage attached to and architecturally consistent with the home. No automobile garage shall be permanently enclosed or converted to other use without the substitution of another enclosed automobile storage area upon the Lot. No carports shall be permitted and all garages shall be at least adequate to house two (2) standard size American automobiles. All garages must have doors that are to be maintained in useable condition. No cars shall be parked on street overnight.

Section 6. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on the Common Area. However, dogs, cats and other common household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time and all waste must be picked up. No pet waste shall be in wetland or common areas. All pets must be vaccinated, licensed and registered as required by law.

Section 7. Rubbish, Trash and Garbage. No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or on the Common Area, except in sanitary containers located behind the home and concealed from public view by shrubs or grasses.

Section 8. Nuisances. Nothing shall be done or maintained on any Lot or on the Common Area which may be or become a nuisance to the neighborhood.

Section 9. Signs. No sign of any kind shall be displayed to public view on any Lot or any Common Area, except for the following:

- A. The Developer, or the sales agent for the Developer, may place one professional sign on any Lot or Lots advertising the Lot or Lots for sale.
- B. Owners may display or place one professionally prepared and constructed “for sale” sign which shall not exceed six (6) square feet in size.

Section 10. Common Area. Nothing shall be altered in, constructed on or removed from, any of the Common Area except upon the written consent of the Association.

Section 11. Size Requirements. The minimum square footage of finished living space dwellings constructed on Lots in the Subdivision, exclusive of porches, terraces, garages, accessory buildings, or basements, or portions thereof, or similar facilities not designed for regular and continuous habitation, shall apply:

- A. One Thousand Seven Hundred (1,700) square feet for all one story dwellings;
- B. Two Thousand (2,000) square feet for all one and one half story dwellings; and
- C. Two Thousand (2,000) square feet for two (2) story dwellings.
- D. No bi-levels, tri-levels or quad-level homes shall be permitted.

Section 12. Residential Setback Requirements. No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision unless in compliance with the setback lines as established in the plat or plats of the various portions of the Subdivision and in compliance with local governmental ordinance, and subject further to the written approval of the Committee, which approval may require a greater setback than the plat or the ordinance.

Section 13. Free-Standing Yard Lights, Mailboxes and House Address Block. The Developer or Committee shall designate, from time to time, a standard exterior free-standing light fixture to be located on all Lots within the Subdivision five (5) feet from the driveway and five (5) feet from the sidewalk. Each dimension shall be measured on the same side of the driveway as the front door of the dwelling. Each Owner of a Lot in the Subdivision shall install the designated light fixture with a dusk to dawn photo cell on the Lot when the dwelling or house is constructed upon said Lot. The Owner shall maintain said light fixture at all times. The Developer or Committee shall designate, from time to time, a standard mailbox to be located on all Lots within the Subdivision.

All mailboxes shall be installed in accordance with the post office/post masters requirements for the Subdivision. The Owner of a Lot shall install and maintain as part of the original construction of the dwelling an address block dimensioned 16" x 8" which shall be located on the front exterior wall of the garage or the front wall of the dwelling immediately adjacent to the front door. The address block shall require the approval of the Committee prior to installation.

Section 14. Exterior Construction. All structures shall be required to meet the following minimum standards for exterior materials in the construction:

- A. Roofing materials shall be made of premium dimensional asphalt shingles, wood shakes, slate or simulated slate, tile, or similar premium roofing material. No metal roofs shall be permitted. The minimum roof pitch on all structures shall be 6/12.
- B. All exterior chimneys on the front elevation of the structure facing any street must be of brick, stone, or other similar type material, and all exterior chimneys must be sided or masonry. The front elevation of all dwellings shall consist of a minimum of twenty five percent (25%) brick veneer or stone.
- C. All driveways shall have a dust-free surface of Portland cement concrete, brick, cobblestone or other similar type material. No asphaltic concrete driveways shall be permitted, unless approved by the Committee.
- D. No structure shall have solar panels that extend above the highest roof line. No solar panels shall be located on the front elevation of a house. All plumbing vents, stacks, and prefabricated flues shall be located in the rear of the roof line visible from the street unless approved by the Committee and have a minimum exposure.
- E. Every home erected on a Lot shall have the top of the foundation height established at two feet eight inches (2' 8") above the top of back of curb measured at the middle point of the Lots street frontage except as otherwise approved by the Developer's designated engineering company where said engineering company determines a different elevation is appropriate for severe slopes, unusual amounts of fill being required, or other site conditions deemed appropriate by said engineering company.

All exterior construction material prior to the use of such material must be reviewed and approved by the Committee.

Section 16. Building Method. All dwellings constructed on Lots in the Subdivision shall be erected from new materials assembled and constructed on the Lot. No dwelling previously constructed elsewhere shall be moved to a Lot in the Subdivision. Manufactured homes, modular homes, pre-fabricated, mobile homes or other similar building methods are prohibited. For purposes of this paragraph, a "manufactured home" shall mean a structure that (i) is assembled in a factory, (ii) bears a seal certifying that it was built in compliance with the federal manufactured housing

construction and safety standards law (42 U.S.C. 5401 *et seq.*); (iii) is designed to be transported from the factory to another site in one (1) or more units; (iv) is suitable for use as a dwelling in any season; and (v) is more than thirty-five (35) feet long.

Section 17. Owner's Obligation to Maintain Lot. The Owner of a Lot in the Subdivision shall at all times maintain the Lot, real estate and improvements in such a manner as to prevent the Lot and improvements from becoming unsightly, and specifically such Lot Owner shall (a) mow and otherwise tend to the landscaping on the Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds; (b) cut down and remove dead trees; (c) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot or Subdivision; and (d) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly. Within any portion of the turf lawn area of an improved Lot, the Owner shall not permit the grass or other growth to exceed four inches (4") in height.

Section 18. Heating Plants. Every dwelling or house in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation.

Section 19. Diligence in Construction and Installation of Yard. Every dwelling, house or other structure whose construction or placement on any Lot in the Subdivision is begun shall be completed within nine (9) months after the commencement of construction and the Lot sodded or seeded within one (1) year after commencement of construction. Commencement of construction shall mean the first date of excavation. All front yards and side yards shall be sodded and the rear yard shall be sodded or seeded. No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage. Upon completion of construction builders shall submit an as built showing sewer, water, electric, phone and cable locations to be kept on file as well as any drainage work that was installed.

Section 20. Time in Which to Build Structures. An Owner of a Lot within the Subdivision must commence construction of the dwelling or house within one (1) calendar year after the Owner's purchase of the Lot or the Developer's sale of said Lot if the Owner did not purchase the Lot from the Developer directly. Construction must begin within ninety (90) days of plan approval. Construction that has not commenced within the ninety (90) days will need to resubmit plans. If construction does not begin or if a dwelling or house is not completed upon a Lot within the prescribed time, the Developer shall have the option to repurchase such Lot for ninety percent (90%) of selling price, in cash, without paying the cost of improvements up to the time of repurchase. This option shall expire if Developer has not notified the Owner of Developer's intent to exercise the option prior to the time of commencement of the construction. The Owner shall reconvey the title to the Lot by general warranty deed along with title insurance in an amount equal to the purchase price.

Section 21. Prohibition of Used Structures. All structures constructed or placed on any Lot in the Subdivision shall be constructed with all new material, and no used structures shall be relocated or placed on any such Lot. All structures must have written approval from the Developer prior to construction or placement on a Lot.

Section 22. Necessary Exceptions for Development. Developer, or the transferees of Developer, shall undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rent, or other disposition of the dwellings is essential to the establishment and welfare of the Subdivision as an on-going residential community. In order that such work may be completed and the Subdivision established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, Developer's transferees, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise. Owner, upon commencement of construction of any residence, dwelling unit or other structure, which is not prohibited by this Declaration shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this Section, the words, "its transferees" specifically exclude purchasers of an individual Lot or Lots improved with completed residences or intended for construction at a later date by someone other than the Developer.

Section 23. Antennae. No exposed radio or television antennae or solar heat panels shall be allowed on any residence on any Lot which is visible from outside such Lot. Satellite dish antennae, the dish for which does not exceed one (1) meter in diameter, shall be permitted subject to the approval of the Committee in accordance with generally acceptable Committee standards. Any permitted satellite dish must be properly screened from the view of surrounding Lots and screening of the satellite dish must be approved by the Committee. No satellite dish may be located in the front yard of any Lot or affixed to the front of any residence.

Section 24. Business Use of Lot. An Owner or occupant residing on a Lot may only conduct business activities within the Lot with the express prior written consent of the Developer, Association or the Board, so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Subdivision; (iii) the business activity does not involve door-to-door solicitation of residents of the Subdivision; (iv) the business activity does not, in the Developer's, Association's, or Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Subdivision which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the Developer's, Association's, or Board's sole discretion. This provision shall not apply to any activity conducted by Developer or any Builder approved by Developer with respect to its development and sale of the Subdivision or its use of any

Lot which either owns in the Subdivision for the original construction of a single family residential home on a Lot.

Section 25. Swimming Pools and Fences. No swimming pool, fence or wall shall be permitted on any Lot without the same having first received the written approval from the Committee, the approval of which will be granted in the sole discretion of the Committee. All fencing shall be of a standard type designated by the Developer. In addition to submittal of plans and other review by the Committee, the Committee may establish standards and specifications for pools, fences and walls, which standards may be amended from time to time by the Committee. Notwithstanding the foregoing, no pool or fence shall be located in the front or side yard of any Lot and no fence shall be permitted which encloses only the area immediately surrounding a pool. Lots with pools shall be required to have the approved fence around the entire yard; no fencing on top of pools shall be permitted. All swimming pools must meet all requirements of the local governmental authority with jurisdiction over the Subdivision. Draining of pools shall not impact neighboring yards.

Article IX

TRANSFER OF UNIMPROVED LOTS

Section 1. Developer's Right of First Refusal. So long as Developer owns at least one Lot in the Subdivision, no Lot and no interest therein, upon which a single family residence has not been constructed shall be sold or transferred unless and until the Owner of such Lot shall have first offered to sell such Lot or Lots to Developer and Developer has waived, in writing, the right to purchase said Lot.

Section 2. Notice to a Developer. Any Owner or Owners intending to make a bona fide sale of a Lot or any interest therein shall give to Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the "Proposed Contract"). Within thirty (30) days of receipt of such notice and information, Developer shall either exercise, or waive exercise of, the right of first refusal. If Developer elects to exercise the right of first refusal, Developer shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:

- A. The price to be paid, and the terms of payment shall be that stated in the Proposed Contract or other terms agreed to by the Owner;
- B. The sale shall be closed within thirty (30) days after the delivery or making of the Developer's agreement to purchase.

Section 3. Certificate of Waiver. If Developer shall elect to waive the right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, Developer's waiver shall be evidenced by a certificate executed by Developer in recordable form

which shall be delivered to the Owner or the Proposed Contract purchaser.

Section 4. Unauthorized Transactions. Any sale of a Lot, or any interest therein, upon which a single-family residence has not been constructed, without notice to Developer and waiver of Developer's right of first refusal as aforesaid, shall be void.

Section 5. Exceptions. This Article shall not apply to a transfer to or sale by any bank, life insurance company, Federal or State savings and loan association, or real estate investment trust which acquires its title as a result of owning a purchase money mortgage upon the Lot 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; nor shall this Article apply to a sale by any such institution which so acquires title. Neither shall this Article require the waiver by Developer as to any transfer of title to a Lot 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.

Article X

GENERAL PROVISIONS

Section 1. Duration and Remedies for Violation. The covenants and restrictions of this Declaration shall run with and bind the real estate submitted pursuant to Article II hereof, and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifteen (15) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless amended as provided for elsewhere in this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give the Developer, Association, or Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them. In the event that any party finds it necessary to employ legal counsel to commence litigation or other proceedings against the other party, the prevailing party shall recover from the non-prevailing party(ies) all fees, charges, costs, and expenses including, but not limited to, reasonable attorney fees, incurred by the prevailing party in connection with the enforcement of its rights and remedies under this Declaration or any rule or regulation of the Association. A prevailing party shall include, without limitation, a party who brings an action against the other party by reason of the other party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.

Section 2. Owner's Obligation to Maintain and Repair. Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction.

Section 3. Compliance with Soil Erosion Control Plan and Soil Removal.

(a) The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with Construction Activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Developer's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

(c) No Owner or its contractor shall remove any soil from any Lot without the prior written consent and approval of the Developer or the Committee of the method, means, timing and other important factors related to the removal of soils over and across any part of the property that comprises the Subdivision. The Developer or the Committee may establish conditions and other rules regarding the removal of soils in its discretion.

Section 4. Notices. Any notices required to be sent to any Member or Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 5. Severability. If any provision of this Declaration is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Declaration, such provision will be fully severable, and this Declaration will be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of this Declaration; and the remaining provisions of this Declaration will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Declaration. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Declaration a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

Section 6. Amendment. This Declaration may be amended, modified or terminated at any time and from time to time upon the execution and recordation of an instrument executed by Owners holding not less than two-thirds (2/3) of the voting interests of the membership, provided that so long as Developer is the Owner of any Lot or any property affected by this Declaration, said amendment shall not be effective without Developer's express written joinder and consent.

Section 7. Usage. Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

Section 8. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Recorder of Porter County, Indiana.

Section 9. Erosion Control, Damage and Landscaping Deposit. At closing on the acquisition of a Lot from the Developer or prior to the commencement of construction on the Lot, as determined by the Developer, the Owner of such Lot shall deposit One Thousand Dollars (\$1,000.00) ("Compliance Deposit") for the Lot with the Developer to insure that erosion control required by the Developer is in place at all times, any damage to streets, parkways, entry or island, debris cleanup, mud removal from streets or other damage by the Owner or the Owner's builder or builder's subcontractors or suppliers shall be re-paved, repaired, replaced or cleaned up, and to ensure that landscaping as required by the covenants for the subdivision is completed. The Compliance Deposit shall only be refunded at the time the Developer determines the construction on the Lot, including landscaping, is complete less deductions equal to an amount incurred by the Developer or Association to correct damages or to satisfy costs incurred for erosion control measures, clean up and/or landscaping. If the costs to repair, replace or remove debris, install landscaping, maintain erosion control, and other matters related thereto, etc. exceed the Compliance Deposit, the amount in excess of the Compliance Deposit shall become a lien against the Lot which lien is enforceable in the same manner as a mechanic's lien.

Section 10. Utility Deposits and Fees. The Developer shall have the right to collect at closing on the Lot deposits for utility services, allocation fees, mailbox and post costs and other deposits made by the Developer pertaining to or arising from the Subdivision. Each Owner shall be solely responsible for any and all impact, conservancy district, utility or other fees or charges, including, but not limited to sewer taps, water taps, park fees, conservancy district charges and taxes, imposed by any governmental or quasi-governmental organization required in order to obtain a building permit for its Lot.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants and Restrictions for Timberland Farms Subdivision to be executed on the date first written above.

Developer:

Timberland Farms, LLC

By: Bernard Madej
Bernard Madej, Manager

STATE OF INDIANA)
) SS:
COUNTY OF PORTER)

Before me, the undersigned, a Notary Public for said County and State, personally appeared Bernard Madej, Manager of Timberland Farms, LLC, and acknowledged the execution of the foregoing instrument to be his free and voluntary act. Signed and sealed this 19th day of APRIL, 2010.

My Commission Expires:

County of Residence:



Notary Public

William A. Ferngren
Commission expires Nov. 3, 2015
County of Residence: Porter

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

William A. Ferngren

This Instrument Prepared By:
William A. Ferngren, Esq.
Ferngren Law Offices, LLC
570 Vale Park Road, Suite B
Valparaiso, Indiana 46385
(219) 464-4500

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