

DCC# 01022271

Key # _____

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
LINDBERG VILLAGE

THIS DECLARATION, made on the 4 day of July, 2001, by Abbington Development, LLC, an Indiana limited liability company, ("Declarant"), WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Tippecanoe County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Real Estate"), attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision known as Lindberg Village Subdivision, Phase 1, 2, 3, 4, 5 and 6, (hereinafter "Subdivision).

WHEREAS, Declarant desires to subdivide and develop the Real Estate and may in the future desire subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at anytime subject to this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property, or any part or parts thereof.

As of the date of execution hereof, the property consists solely of the Real Estate. The Owner of any Lots ("Owner") subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER.

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*Michael A. P...
AUDITOR OF TIPPECANOE CO.*

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

Declarant shall have, and hereby reserves the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this declaration of all rights, obligations, and privileges herein, when Declarant places of record in Tippecanoe County, Indiana an instrument so declaring the same to be part of the property, which declaration may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all of the rights, duties, privileges, and obligations of owners of Lots within the Property. No single exercise of Declarant's rights and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

ARTICLE I
Name

The subdivision of the Property created by this Declaration shall be known and designated as Lindberg Village, Phase 1, 2, 3, 4, 5 and 6, a subdivision located in Tippecanoe County, Indiana.

ARTICLE II
Definitions

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

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

Section 2.2 "Association" means the *LINDBERG VILLAGE HOMEOWNERS ASSOCIATION, INC.*, a non-profit corporation, its successors and assigns. The Association's membership shall consist of Owners who pay mandatory assessments for liability insurance, project sign maintenance, storm water detention area maintenance, maintenance of landscaped areas in landscape easements, management fees, and other expenses as determined by the Association.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), and (2) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereinafter defined) as a "Block", "Common Area", or such other areas within the Property that are not otherwise identified on the Plat (as hereinafter defined) as a Lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.5 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.6 "Declarant" means *Abbington Development, LLC* and its successors and assigns.

Section 2.7 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

Section 2.8 "Dwelling Unit" means any single-family residence for each Lot (as hereafter defined) in Phase 1, 3, 4 and 5, any two single family residences for each Duplex Lot in Phase 2 and 3, and any two or four unit apartment residences in Phase 6.

Section 2.9 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.10 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.11 "Owner" means the record owner; whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.12 "Plat" means the subdivision plat of the Property and identified as the Final Plat of Lindberg Village, Phase 1 and 2, recorded on the 21st day of August, 2001, under Instrument Number 01022270 in the Office of the Recorder of Tippecanoe County, Indiana, the Final Plat of Lindberg Village Phase 3, 4, 5, and 6 to be recorded thereafter in the Office of the Recorder of Tippecanoe County, Indiana, and amendments, supplements, and any plats of subsequent Phases recorded thereafter.

ARTICLE III
Property Rights, Easements and Encroachments

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

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- (b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;
- (d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;
- (e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;
- (f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- (g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication

or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association; and

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

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any Owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

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

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

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

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

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, an undefined easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area(s) or areas now or hereafter shown on the Plat as a "Block", or "Common Area", any other Common Area within the Property used as a water retention or detention area, or on which a lake now exists or is later constructed, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

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

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

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

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

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

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

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

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any recorded plat of Lindberg Village Subdivision Phase 1, 2, 3, 4, 5 and 6, as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the *LINDBERG VILLAGE HOMEOWNERS ASSOCIATION, INC.* for the common enjoyment of all residents in the Subdivision.

Section 3.7 Defined Drainage, Utility, Non Access and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities and public utilities and private for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this Subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities

to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said easements. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated. No vehicular access easements have been stated on the Plat. These non access easements are enforceable by the Area Plan Commission and irrevocable by the Owners.

Section 3.8 Defined Sign Easements, Mounding, Landscaping, and Screening. If there are strips of ground shown on the Plat for (i) mounding easements, (ii) landscape or landscape maintenance easements, and/or (iii) sign easements, then such strips of ground are reserved for such (i) mounding easements, (ii) landscape easements and/or landscape maintenance easements and/or (iii) sign easements. Declarant hereby reserves unto itself during the Development Period, and thereafter, unto the Association, any such easements for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and

no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements. Furthermore, notwithstanding anything in this Declaration to the contrary, at any time during the Development Period no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public except for all streets now or hereafter located upon subsequent Phase 6 (apartment phase) of the Subdivision which shall be private.

Section 3.10 Erosion Control Plan. The Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327IAC 15 Storm Water Run-Off Associated with Construction Activity, a copy of which is on file with the Declarant. The Lot owner agrees to take all erosion control measures contained therein as the plan applies to "land disturbing activity" undertaken by Lot owner or Lot owner's subcontractors, and agrees to comply with the terms of the Declarant'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, as amended from time to time (hereinafter referred to as the "Handbook").

It shall be the responsibility of each owner of each Lot in the Subdivision to comply with all regulations regarding land disturbing activities and soil erosion control during the construction of the residence upon the Lot. The Lot owner shall further be responsible for controlling the activities of his contractors by requiring such items as silt fence, temporary gravel construction entrance, temporary seeding, inlet protection and other erosion control measures as may be necessary.

By assuming ownership of the Lot, the Lot Owner thereby releases the Declarant, the Building Committee, and the Declarant's Engineer from all responsibility for land disturbing activities upon the Lot. The Lot owner shall indemnify and hold Declarant 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 Lot owner, Lot owner's employees, agents, contractors or subcontractors.

ARTICLE IV

Association Membership, Voting Rights Board of Directors and Professional Management

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

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

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Single Family Lot owned, one (1) vote for each Duplex Lot owned, and one (1) vote for each apartment building in Phase 6 of the Subdivision. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (i) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or (ii) December 31, 2010.

Section 4.3 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association.

Directors need not be members of the Association. The initial Board of Directors shall be appointed by the Declarant, shall be named in the Articles of Incorporation of the Association, and shall manage the affairs of the Association until the Declarant transfers control of the Association to the Owners as required herein.

Section 4.4 Responsibilities of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the determination of Common Expenses, the collection of annual and special Assessments, and the granting of approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Covenants contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain casualty insurance, liability insurance and such other insurance as it deems necessary or advisable. The Association by its Board of Directors may contract for management services and such other services as the Association deems necessary or advisable.

Section 4.5 Transfer of Control of Association. Declarant shall transfer control of the Association to the Owners no later than the earlier of:

- (i) four (4) months after three-fourths (3/4) of the Lots in the development have been conveyed to Owners; or
- (ii) December 31, 2010.

Section 4.6 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of not less than ninety (90) days.

ARTICLE V
Covenants for Maintenance Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot or apartment building in Phase 6 of the Subdivision now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot or apartment building in Phase 6 of the Subdivision by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association;

(a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and

(b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. Each Owner covenants and agrees to pay the Association a Pro Rata Share (as hereinafter defined) of any annual or special Assessment established and determined from time to time as hereinafter provided. The Pro Rata Share for each Owner for purposes of this paragraph shall be the percentage obtained by the fraction of one over the total number of Lots and apartment buildings (1/Total no. of Lots and apartment buildings in Phase 6 of the Subdivision) within the Plat. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to such Owner's successors in title unless expressly assumed by them.

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

Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessment.

- (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any single family Lot shall be \$120.00 per Lot per year; on any duplex Lot shall be \$160.00 per Lot per year; on any apartment building in Phase 6 of the Subdivision shall be \$160.00 per building.
- (b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than 10% above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.
- (c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than 10% above the maximum Regular Yearly Assessment for the previous year, with the approval of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.
- (d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, including but not limited to storm drainage systems, which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Notice and Quorum for Any Action Authorized Under this Article. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the

presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for each type of Lot, except that Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction for a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

Section 5.7 Date of Commencement of Yearly Assessment; Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat the first day of the first month following conveyance of the Common Area within such Plat to the Association, or if there is no Common Area, the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.8 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal

obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Common Area owned by the Association or abandonment of his Lot.

Section 5.9 Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

Section 5.10 Covenants for Maintenance.

(a) Every owner of any Lot in the Subdivision, by virtue of such ownership, is deemed to covenant and agree to pay to the Association any assessments made by the Association for maintenance of the storm drainage system and other necessary maintenance in the Subdivision. Such assessments shall be made as hereinbefore defined. If any Owner shall fail to pay any assessment when due, the Association may, in its discretion, file a Notice of Lien against said Owner's Lot in the Office of the Recorder of Tippecanoe County, Indiana, which Notice of Lien shall perfect the lien of the Association and shall have the same force and effect, and be enforced in the same manner, as a mortgage lien under Indiana law and shall include attorneys' fees, title expenses, interest, and costs of collection. Said lien, however, shall be subordinate to any mortgages on the Lot.

(b) This assessment levied by the Association shall be used exclusively for maintaining the storm water structures, storm water detention ponds, and drainage system, which shall be the obligation of the Association to maintain. In the event the Association fails to exercise its obligation for maintenance of the storm water structures, storm water detention ponds, and drainage system of the Subdivision, the Tippecanoe County Drainage Board may perform such maintenance and take all other actions necessary for the proper maintenance of such storm water facilities. The cost of any such maintenance performed by the Tippecanoe County Drainage Board shall be paid by the Association. In the event the Association fails to pay such costs, the Tippecanoe County Drainage Board shall have the right to assess each Lot in the Subdivision a proportionate amount for the costs of such maintenance and, if necessary, to file a Notice of Lien against such Lots in the Office of the Recorder of Tippecanoe County, Indiana. Such Notice of Lien shall perfect the lien of the Tippecanoe County Drainage Board for the proportionate share of costs of maintaining the storm water facilities and said lien shall have the same force and effect, and be enforced in the same manner, as a mortgage lien under Indiana law, and shall include attorneys' fees, title expenses, interest, and costs of collection.

(c) The Association shall have the right and obligation as hereinbefore defined to determine the amount of any assessments against the owners of Lots in the Subdivision, to determine the due dates for payment of such assessments, and to determine the manner of retaining, expending, and handling such assessment funds.

(d) In the event the storm water drainage system servicing the Subdivision or servicing any immediately adjacent subdivision shall become or be proposed to become a legal drain, each owner of a Lot in the Subdivision shall, by virtue of ownership, be deemed to agree and consent to the storm drainage system becoming a legal drain and to all legal requirements and assessments imposed by the Tippecanoe County Drainage Board and applicable drainage ordinances.

ARTICLE VI

Use, Restrictions, and Architectural Control

Section 6.1 Lot Use and Conveyance. All Lots in the Subdivision shall be used for residential purposes and shall adhere to all requirements, covenants and conditions of the Area Plan Commission of Tippecanoe County for their Subdivision as well as all rules and regulations of the applicable zoning and subdivision control ordinances, except that Declarant, during the Development Period, reserves (i) the rights provided in this Declaration respecting the Property generally, and (ii) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of

all Owners and other members of the association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant until the end of the Development Period and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefore as above provided. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, approval will not be required and this Section will be deemed to be fully complied with.

Section 6.3 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any said Lots, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes, do not become a nuisance to other Owners, and are leashed upon leaving Owner's property.

Section 6.4 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.5 Setback Lines. Front Building lines are hereby established as shown on the foregoing Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof except fences in keeping with architectural style as hereinafter stated and as specifically approved by

Area Plan Commission of Tippecanoe County for this Subdivision as well as the rules and regulations of the applicable zoning and subdivision control ordinances. No single family dwelling or duplex shall exceed two stories. All building plans for Apartments in Phase 6 of the Subdivision shall adhere to all requirements, covenants and conditions of the Area Plan Commission of Tippecanoe County and shall have the written approval of the Declarant or the Association as herein stated.

Section 6.14 Size.

(a) Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot on a R-1 zoning classification in the Subdivision shall have a minimum living area exclusive of open porches, unfinished basements and attached garages of not less than 1500 square feet of main floor or 900 square feet of main floor area if higher than one-story; any single family dwelling higher than one-story shall have a minimum of 1800 square feet of total finished living space.

(b) Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot on a R-1B zoning classification in the Subdivision shall have a minimum living area exclusive of open porches, unfinished basements and attached garages of not less than 1250 square feet of main floor or 700 square feet of main floor area if higher than one-story; any single family dwelling higher than one-story shall have a minimum of 1400 square feet of total finished living space.

(c) Subject to any further restrictions imposed by any recorded commitment, every dwelling unit erected, placed, altered or maintained on any Lot on a R-2 classification in the Subdivision shall have a minimum living area, exclusive of open porches, unfinished basements, and attached garages, of not less than 1000 square feet of main floor area for a one-story dwelling unit or 700 square feet of main floor area if higher than one-story; any dwelling unit higher than one-story shall have a minimum of 1400 square feet of total finished living space.

(d) Subject to any further restrictions imposed by an recorded commitment, every multi-family building erected, placed, altered or maintained on any Lot shall have a minimum living area required by the applicable zoning and subdivision control ordinances and shall comply with the plans of Declarant as approved by the Area Plan Commission of Tippecanoe County.

Section 6.15 Masonry Requirement. The front elevation of all single family and duplex dwellings shall be fifty percent (50%) masonry of the first floor exterior wall area, exclusive of doors, windows, gables, and garage

doors. Side elevations of all single family and duplex dwellings on corner Lots shall have a minimum masonry requirement on the side facing the street of three feet (3') side masonry. A waiver of this requirement may be allowed by the Declarant or the Association on any two-story dwelling.

Section 6.16 Attached Garages. Each single family dwelling unit and each duplex unit shall have a minimum of a two-car attached garage.

Section 6.17 Driveways and Off-Street Parking Spaces.

- (a) There shall be a minimum of two (2) off-street parking spaces in each driveway. All driveways shall be constructed of concrete.
- (b) A driveway shall not exceed in width the side boundaries of the garage it serves.
- (c) A driveway must be a minimum width of no less than the interior width of the garage door or doors it serves.
- (d) Side entry garages are permitted, provided that the entry side of the garage meets the width requirements immediately preceding.
- (e) Any other driveway design requires the approval of both the Declarant or the Association and Governmental Authorities and must be submitted with site plan.
- (f) No additional parking shall be permitted on a Lot other than in the existing driveway.
- (g) Builders shall install driveways during original construction of the Dwelling Units.

Section 6.18 Time Limits on Construction.

- (a) The exterior of every Dwelling Unit, garage, or other structure permitted to be constructed or to remain on any Lot shall be completed within six (6) months from the start of construction, including the application of at least one (1) coat of paint, stain or varnish on any exterior wood surfaces. All such structures shall be completed within one (1) year.

- (vi) The Declarant or the Association shall have the discretion to allow other fence types, based on the plans submitted under Article VI, Section 6.2.

Section 6.21 Landscaping. Initial landscaping of each Lot will be required by Declarant or the Association to include specific numbers of each of the following types of landscaping: three (3) hardwood trees – two (2) in the front yard and one (1) in the rear yard, with a minimum of two inches (2") in diameter. Six (6) shrubs shall be required at the foundation of all units with plantings eighteen inches (18") minimum in height. Front yards shall be sodded. On corner Lots, sod shall be placed on the side-yard facing the street. Seed and straw or hydroseeding are acceptable in the rear yards.

Section 6.22 Mailboxes. Builders shall install matching Declarant- or Association-approved and Post Office-approved curb side rural mail boxes during original construction of all Units. Each Owner shall maintain and replace his or her mailbox with the same type, unless a change in design and color is approved by the Declarant or the Association.

Section 6.23 In Ground Swimming Pools. In ground swimming pools shall be permitted in the Development, with the approval of the Declarant or the Association.

Section 6.24 Storage Sheds. All accessory buildings shall be placed on a permanent foundation, shall be constructed of new materials, shall be architecturally compatible with the single family and duplex dwelling units, shall be constructed with the same or equivalent materials as the single family and duplex dwelling unit and shall be subject to the approval of the Declarant or the Association. Accessory buildings shall not exceed ten (10') feet in width, ten (10) feet in height, and ten (10) feet in length. Only one accessory building shall be permitted per Lot.

Section 6.25 Requirements to Mow Grass in Public Rights-of-Way. All Owners shall be required to mow the grass in public rights-of-way including the areas between the sidewalk and the curb for their respective Lots.

Section 6.26 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately.

If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys' fees and costs of collection.

Section 6.27 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.28 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, unlicensed vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.29 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Declarant or the Association in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas, is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area upon the Property. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 6.30 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.31 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonable required, or convenient or incidental to, the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.32 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, wall or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant or the Association. Above ground swimming pools are prohibited on the Property.

Section 6.33 No Vehicular Access. No vehicular access shall be permitted as shown on the Plat. This no vehicular access requirement shall be irrevocable by the Association and/or Lot Owner and is enforceable by the Tippecanoe County Area Plan Commission.

ARTICLE VII
Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 7.2 Common Properties and Laws by the Association.

- (a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
- (i) Maintenance of the Common Area including but not limited to the Lake and Lake Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, mowing and replacing when necessary of the grass and trees and maintenance of any other improvement within the Common Area.
 - (ii) Maintenance of the Entry Signs and perimeter landscaping installed by the Declarant.
 - (iii) Maintenance of the walkways and trails in and around the Common Areas.

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

- (b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association,

unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

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

ARTICLE VIII

Insurance

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

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

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

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

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

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

ARTICLE IX Mortgages

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly,

may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

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

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

Section 9.4 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Unit by the mortgagee.

ARTICLE X General Provisions

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated. Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any

actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions, and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 Amendment. As long as Declarant is a Class B member as defined in Article IV, Section 4.2, Declarant hereby reserves the right to make such amendments to this Declaration as Declarant may deem necessary or appropriate without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or any agency guaranteeing, insuring, or approving mortgages, or to change or modify Covenants for amendments to the Plat or Article VI *Use Restrictions and Architectural Control* which would apply to future construction, provided that Declarant shall not be entitled to make any amendment which will have a materially adverse effect on the rights of any Mortgagee, nor which will substantially impair the benefits of the Covenants to any Owner or substantially increase the obligations imposed by the Covenants on any Owner without the written approval of said Owners as provided under Article V, Section 5.4.

Upon conversion of Class B membership to Class A membership as provided in Article IV, Section 4.2, the Covenants may be amended as provided for under Article V, Section 5.4.

Section 10.4 Duration of Declaration. The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of such ten year period this Declaration is amended or changed in whole or in part pursuant to Article V, Section 5.4. Notwithstanding the preceding sentences, all easements created or reserved by Declarant shall be perpetual unless otherwise indicated herein..

Section 10.5 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 10.6 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

IN WITNESS WHEREOF, *Abbington Development, LLC* has caused this Declaration to be executed as of the date first written above.

ABBINGTON DEVELOPMENT, LLC

By: *Ronald H. Whistler*
(Written)
Ronald H. Whistler, Member
(Printed)

STATE OF INDIANA)
) SS:
TIPPECANOE COUNTY)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Ronald H. Whistler*, a Member of Abbington Development, LLC, who having been duly sworn, for and on behalf of Abbington Development, LLC acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Lindberg Village Subdivision.

Witness my hand and Notarial Seal this 6 day of July, 2001.

Cynthia L. Whisler

Cynthia L. Whisler
(printed)

NOTARY PUBLIC

Resident of Tippecanoe County.

My Commission Expires:

March 6, 2007

This document prepared by:
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Exhibit A

LAND DESCRIPTION

TRACT I (Recorded in Instrument No. 93-18609)
The East half of the southeast quarter of the Southeast quarter of Section Ten (10) in Township Twenty-three (23) North, Range Five (5) West, containing Twenty (20) acres, more or less;

ALSO, the Southwest quarter of the Southeast quarter of Section Ten (10), in Township Twenty-three (23) North, Range Five (5) West;

ALSO, the West half of the Southeast quarter of the Southeast quarter of Section Ten (10) Township Twenty-three (23) North, Range Five (5) West

EXCEPT, a strip of ground One (1) rod in width off of the entire west side of the Southwest quarter of the Southeast quarter of Section Ten (10) in Township Twenty-three (23) North, Range Five (5) West, containing one-half (1/2) acre more or less, the amount hereby conveyed containing seventy-nine and one-half (79 1/2) acres, more or less.

ALSO

Part of the West half of the Southwest quarter of the Southeast quarter of Section Ten (10) Township Twenty-three (23) North, Range Five (5) West, containing fifty hundredths (50/100) of an acre, located in Wabash Township.

TRACT II (Recorded in Instrument No. 9406354)
The North half of the Southeast quarter of Section 10, Township 23 North, Range 5 West, located in Wabash Township, Tippecanoe County, Indiana, containing 80 acres, more or less. EXCEPTING therefrom the right of way owned and occupied by the Lake Erie and Western Railway Company described as follows: A strip of land 100 feet wide upon such route and line as the said company has located or may locate and construct said road through and over the following described lands to wit: The North 1/2, East 1/2, Southeast 1/4 in Section 10, Township 23 North, Range 5 West amounting to 3 acres and 76 rods.

EXCEPT: A parcel of land in the Northeast quarter of the Southeast quarter of Section 11 Township 23 North, Range 5 West, and described as follows:

Beginning at the Northeast corner of the northeast quarter of the Southeast quarter of Section 10, (stone), thence west 504.5 feet along the approximate center of the road and north line of said quarter-quarter section to the north east right of way line of the New York, Chicago & St. Louis Railway; thence southeasterly along said northeast right of way 892.7 feet to the center of the County (Dyer) Road and east line of said Section 10; thence North along said road centerline and Section line 744.6 feet to the place of beginning, containing 4.31 acres, more or less.

ALSO EXCEPT: A tract of land in the N 1/2 of Southeast 1/4 Section 10 Township 23-5 described as follows:

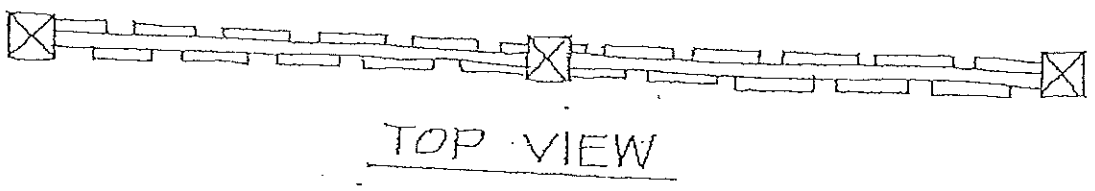
Beginning at an iron pin in the centerline of Road #300 W that is 1309 feet south of the corner of the SE 1/4 of Section 10-23-5; thence west on the fence line of the south half of said Section 10-23-5 a distance of 350 feet to an iron pipe; thence north and parallel to the east line of said Section 10-23-5 a distance of 173 feet to an iron pipe; thence east and parallel to the 1/4 Section line of Section 10 a distance of 350 feet to an iron pin in the center of Road #300 W and the east section line of 10-23-5; thence south on centerline of said road 300 W a distance of 173 feet to the place of beginning, containing 1.38 + or - acres.

ALSO EXCEPT: A part of the Northeast quarter of the Southeast Quarter Section 10-23-5 described as follows: Beginning at a boat spike on the east line of the Northeast quarter of section 10-23-5 west and the center line of County Road 300 West, said point being 173.0 feet North of the southeast corner of said quarter quarter section; thence westerly and parallel with the south line of said quarter quarter section a distance of 350.0 feet to an iron pipe; thence northerly and parallel with the east line of said quarter quarter section a distance of 50.0 feet to an iron pipe; thence easterly and parallel with the south line of said quarter quarter section a distance of 350.0 feet to a boat spike on the east line of said quarter quarter section and the centerline of County 1 #300 West; thence southerly along said east line and said centerline a distance of 50.0 feet to a boat spike and the place of beginning, containing 0.40 acres, more or less.

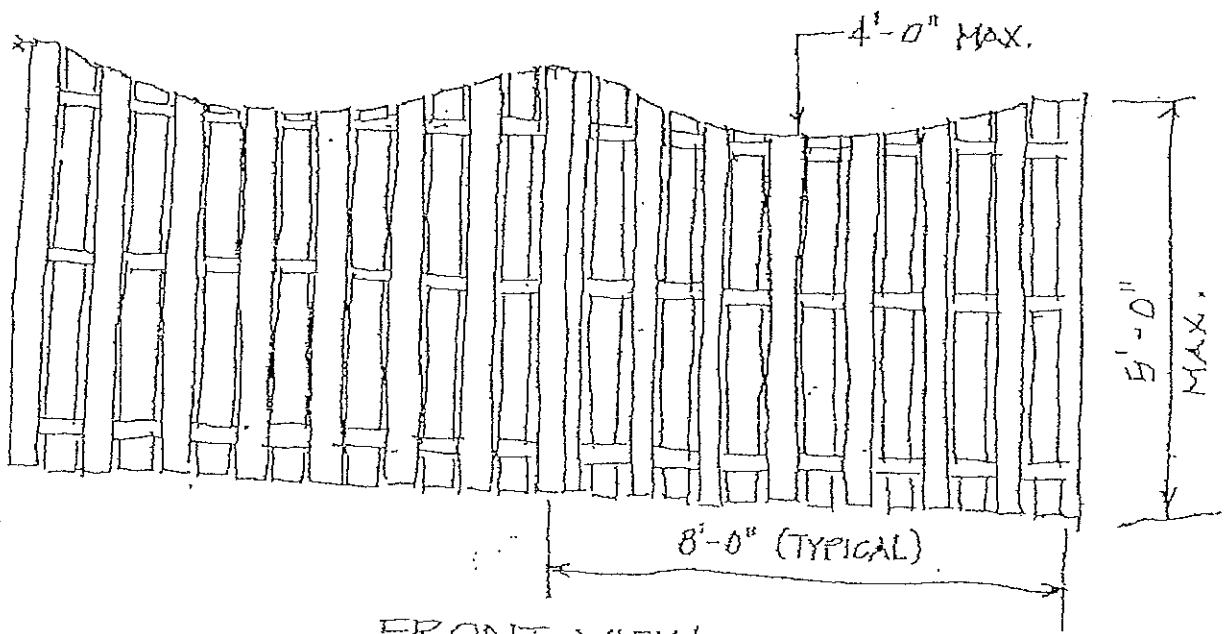
ALSO: The Northeast 1/4 of the Southwest 1/4 of Section 10, Township 23 North, Range 5 West, containing 40 acres, more or less, EXCEPTING a tract described as follows: Beginning at the northwest corner of the east 1/2 of the southwest 1/4 of Section 10, Township 23 North, Range 5 West, thence east on the 1/2 section line a distance of 1263 feet, thence south 435.4 feet, thence west on a line parallel to the 1/2 section line described above 1263 feet, thence North 435.4 feet to the place of beginning, containing 12.64 acres, more or less.

ALSO: Ten (10) acres off of the north end of the Southeast 1/4 of the Southwest 1/4 of said Section 10 said Township and Range aforesaid.

EXHIBIT B
FENCE DESIGN



TOP VIEW



FRONT VIEW