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Third Amended and Restated Declaration of Covenants, Conditions and Restrictions

Lost Run Farm

Zionsville, Indiana

Lost Run Farm Community Association
10333 N. Meridian
Suite 250
Indianapolis, IN 46290

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THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS THIRD AMENDED AND RESTATED DECLARATION is made and entered into this 14th day of August, 2006 by **HIGHGROVE DEVELOPMENT, INC., ("Declarant").**

WITNESSETH

WHEREAS, Declarant is the fee simple title holder of all the lands in Zionsville, Boone County, Indiana contained in and fully described on Exhibit "A", attached hereto and made a part hereof (hereinafter the "**REAL ESTATE**").

WHEREAS, Declarant intends to divide the Real Estate into a residential community containing twenty-one (21) tracts, more or less, for the construction of single-family residences, (each such tract hereinafter referred to individually as a "Site" and collectively as "Sites") and common areas, to be known as **Lost Run Farm**.

WHEREAS, Declarant desires to sell and convey Sites subject to the imposition of certain mutual and beneficial easements, restrictions, covenants, conditions and charges designed to assure ingress and egress thereto and to protect the value and desirability thereof.

WHEREAS, this Third Amended and Restated Declaration amends and restates, in its entirety, that certain Second Amended and Restated Declaration of Covenants and Restrictions with respect to the Real Estate made by Declarant and recorded in the Office of the Recorder of Boone County, Indiana, on December 6, 2005, as Instrument No. 0514419 (the "Second Amended Declaration"), which amended and restated that certain Amended and Restated Declaration of Covenants and Restrictions with respect to the Real Estate made by Declarant and recorded in the Office of the Recorder of Boone County, Indiana, on August 19, 2004, as Instrument No. 0410497 (the "First Amended Declaration"), which amended and restated that certain Declaration of Covenants, Conditions and Restrictions with respect to the Real Estate made by Declarant and recorded in the Office of the Recorder of Boone County, Indiana, on July 26, 2004, as Instrument No. 0409453 (the "Original Declaration"). Declarant has the right unilaterally to amend and revise the Second Amended Declaration pursuant to the provisions of Section 8.08 thereof, and for the sake of convenience and clarity desires to reflect such amendments by amending and restating the entirety thereof. Upon the recordation of this Third Amended and Restated Declaration, the Original Declaration, the First Amended Declaration, and the Second Amended Declaration shall be deemed to be terminated and released of record. The term "Declaration" as used herein shall be deemed to mean this Third Amended and Restated Declaration.

NOW, THEREFORE, Declarant hereby declares that each Site and all Sites shall be held, conveyed, encumbered, leased, rendered, used, occupied and improved subject to the following covenants, conditions and restrictions, which shall run with the Real Estate and be binding on each party having any right, title or interest in any Site or Sites, and his, her or its heirs, beneficiaries, successors, assigns and personal and legal representatives, and which covenants, conditions and restrictions shall inure to the benefit of the Owners and each and every one of the Owners' successors in title to any Site or Sites into which the Real Estate is subdivided.

ARTICLE I

Definitions

Section 1.01. Declaration: "Declaration" shall mean this instrument, together with any amendments or changes hereto which are hereafter made and evidenced as herein required.

Section 1.02. Declarant: "Declarant"shall mean **Highgrove Development, Inc.**, its successors or assigns in the ownership, development and division of the Real Estate, and/or any person, firm, corporation or other legal entity specifically designated as such as set out in Article III of this Declaration.

Section 1.03. Site: "Site", referred to in the plural thereon as "**Sites**", shall mean any of the twenty-one (21) lots, intended as a building site, into which the Real Estate is subdivided, which tracts are to be numbered in sequence as set out in the plat of the Community recorded in the office of the Recorder of Boone County, Indiana, on recorded July 26, 2004, in Plat Book 15, page 8 as Instrument Number 0409452, in the Office of the Recorder of Boone County, Indiana (the "Plat"), and any subsequent phases recorded thereto, as any Site(s) may be enlarged or diminished by Declarant in connection with a reconfiguration thereof (in which event each Site shall be defined by the outside boundaries thereof). In no event shall any reconfiguration result in any Site having an area less than the area permitted by applicable zoning laws and in no event shall the Real Estate be divided to permit the construction of more than twenty-one (21) single family residences and related improvements otherwise permitted hereunder. Further, no changes to the exterior boundaries of the Plat can be made unless a replat is approved by the Zionsville Plan Commission.

Section 1.04. Owner: "Owner", referred to in the plural as "**Owners**", shall mean and refer to the record owner, whether one or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal and legal representatives, of the legal title to any Site, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Declarant shall also be considered an Owner for purposes of this Declaration for so long as, and to the extent that, Declarant owns a Site or Sites.

Section 1.05. Common Areas 1, 2, 3, and 4: Common Areas (C.A.) are designated on the Plat of the Community, consist of the following, shall be used for the uses specified below and are subject to the easements shown on the Plat:

C.A. 1 – 1.174 acres, more or less, which shall include the central mail building and two parking pads.

C.A. 2 – 3.058 acres, more or less, which shall include the picnic pavilion building, two parking pads, the waterfall, pond 2 and will be maintained as natural or landscaped open space and for storm water retention and detention.

C.A. 3 – 3.605 acres, more or less, which shall be maintained as natural or landscaped open space.

C.A. 4 – 1.133 acres, more or less, which shall be maintained as natural or landscaped open space.

Section 1.06. Blocks A, B, C, D, E, F, G, and H: Blocks A, B, C, D, E, F, G and H designated on the Plat consist of the following, shall be used for the uses specified below and are subject to the easements shown on the Plat:

Block A – 1.288 acres, more or less, which is and shall remain owned by Lost Run Farms, LLC and its successors and assigns and which shall be utilized as a construction parking lot until otherwise determined by Declarant, at which time it may be used for any purpose, without regard to any restriction contained in this Declaration, permitted by law. Notwithstanding anything herein or in the Plat (as hereafter defined) to the contrary, Block A is not subject to the covenants, agreements and restrictions of this Declaration (whether expressly or by implication by being depicted on the Plat).

Block B – 14.680 acres, more or less, which shall be maintained as natural open space and shall include the community parking area and is floodway.

Block C – 15.441 acres, more or less, which shall be maintained as specified in Section 7.05 of this Declaration and is floodway.

Block D – 0.656 acres, more or less, which shall be maintained as natural or landscaped open space.

Block E – 0.054 acres, more or less, which shall be maintained as natural or landscaped open space.

Block F – 0.331 acres, more or less, which shall be maintained as natural or landscaped open space.

Block G – 0.061 acres, more or less, which shall be maintained as natural or landscaped open space.

Block H – 2.823 acres, more or less, containing the private roadways throughout the Community consisting of Lost Run Trail, Lost Run Lane, Lost Run Meadow, Woodard Place and Woodard Bluff.

Section 1.07. Driveway: "Driveway", referred to in the plural as "**Driveways**", shall mean that portion of any Site developed and hard surfaced for the purpose of permitting ingress and egress to and from such Site from the private roadways within the Community.

Section 1.08. Site Development Plans: "Site Development Plans" shall mean (i) a site plan, prepared by a licensed civil engineer or registered land surveyor approved by Declarant, showing existing improvements on a Site, any proposed alteration of the topography, elevation or natural state of the Site in connection with the improvement thereof or any construction thereon, and locating thereon all proposed improvements and structures showing finished floor elevations and details relating to drainage; (ii) complete house building and/or accessory structure plans, including structural details, exterior elevations and floor plans; (iii) material plans and specifications; (iv) landscaping plans; and (v) all other data or information which Declarant or the Architectural Review Board may reasonably request.

Section 1.09. Association: "Association" shall mean the incorporated Association of Owners called Lost Run Farm Community Association, Inc. and established in accordance with Article IV of this Declaration, or such other legal entity as may be formed as a successor thereto.

Section 1.10. Community: "Community" shall mean the Real Estate as divided into Sites, Blocks and Common Areas all as evidenced by a plat thereof recorded July 26, 2004, in Plat Book 15, page 8 as Instrument Number 0409452, in the Office of the Recorder of Boone County, Indiana, identified as the plat of Lost Run Farm.

Section 1.11. Permanent Open Space: "Permanent Open Space" shall mean spaces in Blocks B & C in which no buildings for human habitation will be built.

Section 1.12. Maintenance Costs: "Maintenance Costs" means all of the costs necessary to keep the Common Areas 1-4, Blocks B and D-H, the streets, the landscaping, entrance and internal signage, entrance buildings, the walls along Templin Road and the eastern boundary, and berms, along with trails and other structures located within the Common Areas or Blocks within the Community operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility, and those costs such as the foregoing as are incurred by Declarant and its successors and assigns with respect to Block C.

Section 1.13. Ordinance: "Ordinance" shall mean the set of requirements issued in bound form and published by the Town of Zionsville for the purpose of setting standards for the development of subdivisions in Zionsville. The Ordinance defines yard setbacks and other requirements that may be superseded by the Register.

Section 1.14. Applicable Date: "Applicable Date" means the earlier of (i) the date when all Sites on the Real Estate have been sold to a person other than Declarant, or (ii) December 31, 2014.

Section 1.15. Register: "Register" shall mean that certain document entitled Lost Run Farm Architectural Review Board Register of Regulations that describes

architectural and building requirements for the Community. Such requirements include those that are in this Declaration as well as additional requirements.

Section 1.16. Board of Directors: "Board of Directors" shall mean those parties who are charged with performing the obligations of the Association as described in the Articles of Incorporation and By-Laws of the Association.

Section 1.17. Articles: "Articles" shall mean the Articles of Incorporation of the Association.

Section 1.18. By-Laws: "By-Laws" shall mean the Code of By-Laws of the Association.

Section 1.19. Architectural Review Board: "Architectural Review Board" shall mean the Architectural Review Board that is provided for in the By-Laws. The Architectural Review Board is responsible for reviewing and deciding upon all aspects of Site Development Plans submitted by the Owners.

Section 1.20. Residence: "Residence" shall mean a structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

Section 1.21. Member: "Member" shall mean a member of the Association and "Members" means all members of the Association.

Section 1.22. Person: "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 1.23. Assessment: "Assessment" means a General Assessment or a Special Assessment, as the case may be.

Section 1.24. General Assessment: "General Assessment" means an assessment imposed pursuant to Section 4.10 hereof.

Section 1.25. Intentionally Left Blank.

Section 1.26. Intentionally Left Blank.

Section 1.27. Special Assessment: "Special Assessment" means an assessment imposed pursuant to Section 4.13.

ARTICLE II

Character of Sites

Section 2.01. In General. Every Site or group of Sites referred to in these covenants shall be used exclusively for single-family residential and accessory use purposes.

Section 2.02. Improvement and Development of Sites. No Site shall be further divided to create any additional Site upon which a Residence and improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of this Declaration. Not more than one (1) Residence and such related accessory structures and recreational facilities as may be permitted by this Declaration shall be constructed, altered, placed or permitted to remain on any Site referred to by the covenants. One or more Sites may be combined to form a site for one (1) Residence.

Section 2.03. Occupancy or Residential Use of Partially Completed Structure Prohibited. No structure constructed on a Site or combination of sites shall be occupied or used for residential purposes for human habitation until it has been substantially completed. The Architectural Review Board and the Zionsville Plan Commission, or its designee, shall make the determination of whether a structure has been "substantially completed" and such decision shall be binding on all parties affected thereby.

ARTICLE III

Declarant/Architectural Control

Section 3.01. Declarant. Except as otherwise provided herein, the powers and authorities contained in this Article shall be vested in the Declarant and the covenants, conditions and restrictions in Article V of this Declaration shall be administered and enforced by Declarant, or their designated successors and/or assigns. The exercise of such administration and enforcement duties by Declarant shall not relieve any Owner of any duty and obligation imposed by this Declaration or compliance with the covenants, conditions or restrictions as the same are recorded in the Office of the Boone County Recorder. Also, such actions by the Declarant do not relieve the Owner from its obligations to comply with the Town of Zionsville zoning requirements and comply with the requirements of the Ordinance.

Section 3.02. Architectural Control. An Architectural Review Board consisting of five (5) or more Persons as provided in the By-Laws shall be appointed by the Board of Directors of the Association. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Sites and Common Areas and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography. The Architectural Review Board shall have the

power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve such purposes to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors, which may temporarily suspend or modify such guideline or standard, by a two-thirds (2/3) vote of the Board of Directors then serving. The Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in this Paragraph, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, and planting, maintenance and removal of vegetation on the Development Area. Such general rules may be amended by a three-fifths (3/5) vote of the Architectural Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register and shall constitute restrictions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to this Section if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures. The Architectural Review Board may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Site Development Plans.

No Site shall be developed and no single family dwelling house, accessory building, driveway or other structure or improvement of any type, kind or character shall be constructed, placed, altered or permitted to remain on any Site in the Community without the prior written approval of the Architectural Review Board, as hereafter provided. Any required approval shall be requested by an Owner by written application to the Architectural Review Board. Such written application shall be made in the manner and form prescribed from time to time by the Architectural Review Board, and shall be accompanied by six (6) complete sets of the Site Development Plans and such other information as may be reasonably required by the Architectural Review Board. The authority given to the Architectural Review Board hereby is for the purpose of determining whether the proposed improvement and development of a Site is consistent with the terms and provisions of this Declaration, is consistent with and meets Declarant's overall plans for improvement and development of the Real Estate and is compatible and consistent with the development of other Sites. In the event that a written approval is not received from the Architectural Review Board within thirty (30) days from the date submittals are made, the failure to issue such written approval shall mean the disapproval thereof. In the event of disapproval, the Architectural Review Board shall give a short statement of the reason or reasons for such disapproval within ten (10) days following receipt of a written request to do so. The Architectural Review Board may unilaterally deny approval of Site Development Plans if the single-family dwelling does not meet the requirements in the Register. In furtherance of the foregoing purposes, the Architectural Review Board is hereby given discretion as to matters related to location, building orientation, layout, design, architecture, color schemes, landscaping and appearance in approving Site Development Plans. Every owner by the purchase of a

Site shall be conclusively presumed to have consented to the exercise of discretion by the Architectural Review Board. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion. Any house, building or other accessory structure plans included as a part of any application to Declarant for required approvals shall set forth the color and composition of all exterior materials proposed to be used and any site plan submitted shall describe and detail all proposed landscaping and include any other material or information which Declarant may reasonably require. All site and landscaping plans and drawings representing a part of the Site Development Plans and any other plans reasonably required to be submitted to Declarant shall be drawn to a scale of 1" = 10', or to such other scale as Declarant may require. All house plans and drawings representing a part of the Plans and any other plans reasonably required to be submitted to Declarant shall be drawn to a scale of 1" = 4', or to such other scale as Declarant may require. All plans submitted shall be prepared by either a registered land surveyor, engineer or architect unless the Declarant or the Architectural Review Board specifically permits otherwise.

The Architectural Review Board shall not be required to consider any Site Development Plan submitted by an Owner who is, at the time of submission of such Site Development Plan, in violation of the requirements of this Section 3.02, unless such Owner submits to the Architectural Review Board with such Site Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Site any improvements, landscaping or exterior lighting constructed and/or installed prior to the submission of a Site Development Plan (or constructed and/or installed in violation of a previously approved Site Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping or exterior lighting is not subsequently approved by the Architectural Review Board. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the person having submitted a Site Development Plan for approval by the Architectural Review Board has violated this Declaration or the requirements in the Register and such violation remains uncured.

Section 3.03. Liability of Declarant and Architectural Review Board. Neither the Declarant nor any of their respective members, managers, shareholders, officers, agents, successors or assigns, nor the Architectural Review Board, nor any member or any agent thereof shall be responsible in any way for any defects or insufficiencies in any plans, specifications or other materials submitted for review, whether or not approved by the Declarant or the Architectural Review Board, nor for any defects in any work done in accordance therewith. Neither Declarant nor any of their respective members, managers, shareholders, officers, agents, successors or assigns, nor the Architectural Review Board, nor any member nor any agent thereof shall have any liability whatsoever which is claimed or alleged to result, in whole or in part, upon refusal to approve Site Development Plans. Further, the Declarant and the Architectural Review Board do not

make, and shall not be deemed by virtue of any action of approval or disapproval taken by any of them to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

Section 3.04. Inspection. Declarant and the Architectural Review Board or its members or agents shall have the right to go upon any Site without being a trespasser to inspect any work being performed thereon to assure compliance with this Declaration and conformity with Site Development Plans and with any other plans or submittals made to the Architectural Review Board and upon which any approvals required by this Declaration were based.

Section 3.05. Assignment of Duties. All of the duties, responsibilities and rights held by Declarant under this Declaration shall be exercised and administered by Declarant in good faith until such time, if any, as they may be assigned by Declarant to the Association (as hereafter defined) and/or the Architectural Review Board. Declarant shall also have, at its sole discretion, the ability to assign its powers under 3.01, to any other individual or legal entity. Any such assignment shall be at the option and sole discretion of Declarant and may be made at any time or stage of development. Any assignment by Declarant shall be by written instrument duly executed and recorded in the Boone County Recorder's Office. Following any such assignment and recordation, the duties, responsibilities and rights of Declarant under this Declaration shall immediately vest in and be performed by assignor or successor.

ARTICLE IV

Association and Assessments

Section 4.01. Association. In order to provide for the continuing maintenance and administration of the Community, Declarant has or will establish an Indiana nonprofit corporation to be known as Lost Run Farm Community Association, Inc. (the "Association").

Section 4.02. Member in the Association. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a mortgagee or other person would realize upon its security and become an Owner, it shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of assessments.

Section 4.03. Powers. The Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law, including but not limited to:

a) The maintenance and upkeep of the landscaping installed by the Declarant and/or Association within the areas shown on the Plat and contained within the Common Areas 1 – 4, inclusive and Blocks B and D – H.

Further, the Association shall be responsible for maintenance and upkeep of Ponds 1 and 2 as contained in Block B and C.A. 2, respectively, the common parking area in Block B and for reimbursing Declarant for the costs of maintaining Blocks A and C. The Association shall also be responsible for maintenance and upkeep of the entrance to the Community, any internal signage, any entrance buildings, the walls along Templin Road and the eastern boundary, along with other structures located within the Common Areas or Blocks within the Community. The Association shall also be responsible for maintenance and upkeep of the private roadways, including snow removal, known as "Lost Run Lane", "Lost Run Trail", "Lost Run Meadow" "Woodard Place", and "Woodard Bluff" and the overflow and construction parking lots and the access thereto. The Association shall also be responsible for maintenance and upkeep of all mechanical equipment including the irrigation systems, the pond water recirculation system, and the mowers and other machines that are used for the maintenance of the Community. The Association shall be responsible to pay for the utilities associated with the operation, heating and cooling of the common buildings built by the Declarant for the common benefit of the Owners.

b) Procuring of utilities used in connection with the buildings and lighting in Common Areas and Blocks.

c) Maintaining public liability and casualty insurance in prudent amounts insuring against risk of loss to the Association on account of injury to person or property and damage to property owned by the Association and shall pay all taxes assessed against such property and all utility charges incurred with respect to the Common Areas, right of way and Blocks for which the Association has maintenance responsibility.

d) Determination of general and special assessments levied against the Owners to meet the financial impositions for maintenance and upkeep of Common Areas and Blocks.

e) Promulgation and enforcement of the rules and regulations in this Declaration or as otherwise duly promulgated by the Owners.

f) Exercise of the powers vested in the Association by this Declaration or by the Articles and Bylaws of any successor corporation thereto.

g) Strict enforcement of the "no parking" restriction and limitation on all private roadways through the Community. This includes the ability of Declarant and/or Association to hire and contract for private enforcement and the towing or removal of vehicles.

Section 4.04. Classes of Members. The Association shall have a single class of members.

Section 4.05. Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws.

Section 4.06. Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of repair, renewal and replacement of the capital improvements and plants in the Common Areas and Blocks, including reimbursing Declarant and its successors and assigns with respect to those in Block C. In determining the amount, the Board shall take into consideration the expected useful life of the Common Areas and Blocks, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements may be funded by a Special Assessment, provided that the amount of such Special Assessment shall be a uniform amount for all Sites, without regard to whether a Residence has been constructed on the Site, with Declarant to be responsible for paying such Special Assessment for any Sites owned by Declarant. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the costs of periodic maintenance, repairs, renewal or replacement of the Common Areas and Blocks.

Section 4.07. Maintenance Standards. In each instance in which this Declaration imposes on the Association a maintenance obligation with respect to the Common Areas and Blocks or a part thereof, the Association shall maintain the Common Areas and Blocks or designated part thereof in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a luxury residential subdivision. Grass, trees, shrubs and other plantings located on the Common Areas and Blocks for which the Association has maintenance responsibility shall be kept neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and sightly condition appropriate to a luxury residential subdivision.

Section 4.08. Mergers. Upon a merger or consolidation of another corporation with the Association, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Development Area together with the covenants and restrictions established upon any other properties as one scheme. No merger or consolidation, however, shall effect any revocation, change or addition to the covenants

established by this Declaration within the Development Area except as hereinafter provided.

Section 4.09. Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Site by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (1) General Assessments levied pursuant to Section 4.10 and (2) Special Assessments levied pursuant to Section 4.13 below, such Assessments to be established and collected as hereinafter provided. All assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Site against which each Assessment is made until paid in full. Each assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of the Site at the time when the assessment became due.

Section 4.10. General Assessment. The General Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Sites and for the operation and maintenance of the Common Areas and Blocks. Each Site owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Site. Except as hereafter provided, no Site owned by Declarant shall be assessed by the Association except such Sites as have been improved by the construction thereon of Residences which shall be subject to assessment as provided herein. Prior to the earlier of (a) the date of the sale of seventy-five percent (75%) of the Sites within the Community to Owners other than Declarant; (b) the written resignation of Declarant from its capacity as Declarant; or (c) the Applicable Date, Declarant shall, in lieu of paying the General Assessment on Sites that it owns, contribute to the Association sufficient funds to cover any operating deficit in the annual budget of the Association, and thereafter Declarant shall pay the General Assessment with respect to any Sites that it owns.

The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by the Owners of two-thirds (2/3) of Sites (excluding Declarant, and with each Owner receiving one (1) vote for each Site owned by such Owner). By a vote of a majority of the Directors, the Board of Directors shall fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The General Assessment for calendar year 2004 shall not exceed the annual rate of $5,000 per Site, which amount shall be pro-rated for any partial year. Prior to the Applicable Date, the General Assessment may be continued at the same level as the General Assessment for the previous year, decreased, or increased by an amount not exceeding ten percent (10%) of the previous year's General Assessment, provided that, upon the approval of two-thirds (2/3) of Sites (with Declarant receiving one-half (1/2) vote for each Site owned by Declarant, and with each other Owner receiving one (1) vote for each Site owned by such Owner), the General Assessment may be increased by an amount not exceeding twenty-five percent (25%) of the previous year's General Assessment, and further provided that, upon approval by the Owners of two-thirds (2/3) of Sites (excluding Declarant, and with each Owner receiving one (1) vote for each Site owned by such

Owner), the General Assessment may be increased by more than twenty-five percent (25%) of the previous year's General Assessment. From and after the Applicable Date, the maximum annual assessment may be increased by an amount greater than ten percent (10%) only after a vote of two-thirds (2/3) of the Members at a meeting called for this purpose.

Notice of the uniform general assessment shall be sent by the Treasurer of the Association to each Site Owner by October 31st next succeeding. Unless otherwise determined by majority vote of the Owners, the general assessment established shall be paid in full to the Treasurer of the Association in one (1) installment on or before November 30th next succeeding. The provisions hereof for uniform assessment shall not be deemed to require that all assessments against vacant Sites or Sites improved with comparable types of Residences be equal, but only that each Site be assessed uniformly with respect to comparable Sites subject to assessment for similar costs and expenses.

Section 4.11. Violations. If an Owner violates any of the terms of this Declaration (excluding the obligation to pay any Assessments, which shall be cured immediately and shall not require written notice from the Association), the Association shall provide written notice of such violation to the Owner requesting that such Owner cease any such violation and correct or repair any damage caused by such violation. If such Owner fails to correct such violation promptly, or commits another violation after receipt of written notice of the first violation, the Association may correct any such violation or damage caused thereby and shall bill the Owner for the cost of correcting such violation. In the event that the Owner shall not pay such bill within five (5) days of receipt, the cost of correcting the violation shall constitute a lien upon the Site of such Owner and may be enforced in the manner provided in Section 4.15. Without limiting the foregoing, in the event of a third violation of this Declaration by the same Owner, such Owner shall, upon receipt of a written order from the Architectural Review Board, immediately cease any construction, improvement or other work on such Owner's Site.

Section 4.12. Intentionally Left Blank

Section 4.13. Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Areas and Blocks, including fixtures and personal property relating thereto, (but, prior to the Applicable Date, excluding any costs of repairing any defects in work initially performed by Declarant for a period of two (2) years following Declarant's completion thereof), and provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Sites are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

Section 4.14. Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Sites within the Community on

the first day of the month following conveyance of the first Site in the Community to an Owner who is not Declarant. The initial General Assessment on any assessable Site shall be adjusted according to the days remaining in the month in which the Site became subject to assessment. Upon conveyance of a Site to an Owner who is not Declarant, such Owner shall pay a pro rata portion of the General Assessment for the calendar year in which the conveyance occurs.

Section 4.15. Effect of Nonpayment of Assessments; Remedies of the Association. Declarant hereby covenants and each Owner of each Site by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association general and special assessments, such assessments to be established and collected as provided in this Article. Until paid in full, an assessment not paid when due, together with interest thereon (at a percentage rate per annum equal to a 10% simple interest rate) and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Site against which such assessment(s) is made. Each assessment, together with interest and costs of collection as aforesaid, shall also become and remain, until paid in full, the personal obligation of the one or more persons or entities in ownership of the Site at the time when the assessment first became due and payable. If any Owner fails, refuses or neglects to make payment of an assessment when due, the lien for such assessment on such Owner's Site may, at any time following notice thereof, by first class United States mail of the amount due, to an Owner and the expiration of ten (10) days from the date such notice is sent, be foreclosed by the Association in the same manner in which a Mechanic's Lien is foreclosed from time to time under Indiana law, or in any other manner otherwise from time to time permissible or provided by law. The Association may, at its option, bring a suit against the Owner (and if more than one, either jointly or severally) to recover a money judgment for any unpaid assessment without foreclosing the lien for such assessment or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Association shall be entitled to recover interest as aforesaid and the costs and expenses of such action, including, but not limited to, reasonable attorneys' fees and court costs. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas and Blocks or abandonment of his Site.

Section 4.16. Priority of Lien to Mortgages. The lien of the Assessments provided for herein against a Site shall be subordinate to the lien of any recorded first mortgage covering such Site and to any valid tax or special assessment lien on such Site in favor of any governmental taxing or assessing authority. The sale or transfer of a Site shall not release a Site from liability for any assessments that are then or thereafter due and payable, or from the lien therefor.

Section 4.17. Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Site have been paid or that certain assessments remain unpaid, as the case may be.

Section 4.18. Annual Budget. By a majority vote of the Board of Directors, the Board of Directors of the Association shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met and shall further outline all anticipated expenses and obligations for the period covered thereby. An annual accounting from the previous year shall be submitted at the annual meeting. Notice of the uniform General Assessment shall be sent by the Treasurer of the Association to each Site Owner by October 31st next succeeding. The General Assessment established shall be paid in full to the Treasurer of the Association in one (1) installment on or before November 30th next succeeding. Upon receipt of payment, the Treasurer shall deposit the amount involved in an account opened and maintained in the name of the Association at a state or national bank having a banking office in Lebanon, Zionsville or Indianapolis, Indiana. Withdrawals from such account shall be made only upon the approval of either the President or Treasurer of the Board of Directors signing individually and only for a purpose or purposes set forth in this Declaration.

Section 4.19. Conveyance of Title. Declarant may retain the legal title to the Common Area and Blocks until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Common Areas and Blocks (other than Block A to which title will be retained by Lost Run Farms, LLC and its successors and assigns and Block C to which title will be retained by Declarant and its successors and assigns) to the Association by special warranty deed, free and clear of all liens and other financial encumbrances exclusive of the lien for taxes not yet due and payable, not later than the Applicable Date.

ARTICLE V

Site Development

Section 5.01. Site Development. Prior to the development, improvement or alterations of, or the construction on or addition to, a Site or Sites, the Owner(s) thereof shall first obtain written approval from the Architectural Review Board of the Site Development Plans as required by Article III of this Declaration. Any improvement, development or alteration of a Site or Sites, and any construction thereon or addition thereto, shall strictly comply with this Article V. In the event of a conflict between a set of duly approved Site Development Plans and the terms and provisions of this Article V, the terms and provisions of Article V shall control. All construction upon, landscaping of and other improvement to a Site shall be completed strictly in accordance with the Site Development Plan approved by the Architectural Review Board.

Section 5.02. Type, Size and Nature of Construction Permitted. No single family dwelling house, garage, driveway, accessory building, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed or altered on any Site without the prior written approval of the Architectural Review Board, as required by this Declaration. Such approval and all such approvals required by the Zionsville Plan Commission, shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

a) No structure or building shall be erected, altered, placed or permitted to remain on any Site other than one single family dwelling, one private attached garage for a minimum of three vehicles, and such other accessory buildings or structures related to swimming pools, tennis courts and other recreational facilities, including greenhouses, which are usual and incidental to the use of the Site for single family residential purposes. Each attached garage shall be designed as a part of the single-family dwelling house to which it is attached. Unattached garages and carriage houses may be erected only upon express written approval of Declarant or assignee or designee. Further, garage doors shall remain closed except when entering, exiting or otherwise having the need to access the garage. The garage door openings for each single family dwelling are discouraged from facing directly and/or running parallel to the dedicated public road or the private roadway serving the Community. It is the intent of this paragraph that the garage door opening shall be designed and constructed in such a manner to minimize, to the extent possible, any direct viewing from the private roadways.

b) No single family dwelling house may be constructed on any Site unless such dwelling house, exclusive of open porches, attached garages and basements, shall have a total floor area (above grade) of 4,000 square feet. In the case of a dwelling house with more than one story, the ground floor area shall not be less than 3,000 square feet.

c) No single family dwelling house, garage or accessory structure of any kind shall be moved onto any Site and all materials incorporated into the construction thereof shall be new, except that used brick, stone or the like, or interior design features utilizing other than new materials, may be approved by the Declarant or the Architectural Review Board. No tent, basement, storage sheds, garage, barn or other structure shall be placed or constructed on any Site at any time for use as either a temporary or permanent residence or for any other purpose.

d) The single family dwelling house along with any accessory buildings (other than greenhouses or indoor pools with track roofs) constructed on a Site shall have a slate, tile, wood shake or architectural grade dimensional fiberglass or asphalt shingle roof and accessory buildings shall be made out of the materials, or combination thereof, from which the single family dwelling house on the same Site is constructed.

e) The concrete foundation of any single family dwelling house or accessory structure constructed on a Site shall be covered on the exterior with brick or stone veneer so that no portion of the exterior thereof is left exposed above ground.

f) Each attached garage shall be designed as a part of the single-family dwelling house to which it is connected.

g) The roof of each single family dwelling house constructed on a Site (excluding that portion of the roof covering the attached garage or open or enclosed porch) shall have a pitch of 12/12 or greater unless otherwise approved by Declarant as a part of Declarant's approval of Site Development Plans. The roof shall be comprised of slate, tile, wood shake or architectural grade dimensional fiberglass or asphalt shingles.

h) No house or other structure shall contain aluminum or vinyl siding. Further, no plywood, Hardi plank or other sheets of wood with dimensions of four (4) by eight (8) foot may be used for exterior siding.

i) No open loop geothermal heat pumps shall be allowed.

j) No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

k) No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Site.

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

m) No room air conditioning unit shall be installed so as to protrude from any structure located on a Site (including but not limited to the window of any Residence or garage) if the same would be visible from a roadway, a Common Area or any other Site; provided, however, that this Restriction shall not apply to central air conditioning units.

n) No basketball goal shall be placed or maintained in the front driveway of a Site or within fifty (50) feet of any street. Unless the Architectural Review Board adopts a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or similar type of post. The location of a basketball goal on the Site is subject to approval of the Architectural Review Board if it would be visible from a roadway adjoining the Site.

o) No above ground swimming pool, other than a children's wading pool, shall be permitted on any Site.

Section 5.03. Tree Preservation. Existing (pre-construction) trees are a large part of what makes the Community a very special and valuable property. Some of the existing trees could not be easily replaced, making them very valuable. Therefore, the Community has established the following approval requirements for removal of existing trees.

Prior to the commencement of any construction activity on a Site, a delineation of the building area for each Site shall be submitted to the Architectural Review Board for approval. All healthy trees outside the building, driving and parking areas shall be designated by type and size and shall not be removed unless approved by the Architectural Review Board upon evidence of unusual hardship in the practical utilization of the Site and such removal shall not cause a significant adverse effect upon the aesthetic values of adjoining properties. Healthy trees inside the building area shall not be destroyed, but shall be moved to other areas of the Site, unless they exceed 12" in diameter and cannot be moved. Any dead, decaying, structurally unsound or otherwise dangerous tree and all locust trees can be removed without the approval of the Declarant or the Architectural Review Board

Owner agrees to replace, during the next transplanting season, at owner's expense, each tree that can be replaced, if such tree is damaged or removed in violation of this provision, after written notice from the Declarant or the Architectural Review Board, with a tree of an equivalent size and of a species established by the Architectural Review Board. Upon failure to do so, the Architectural Review Board shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the Site and may be enforced in the manner provided in Section 4.15. For purposes of executing this covenant, an easement of ingress and egress is hereby reserved on each Site for the performance thereof.

Adequate physical barriers, such as straw bales or snow fence, shall be provided by builders to protect trees to be preserved from damage by construction equipment or otherwise in the erection of building improvements. Pruning of trees outside the building line shall be permitted subject to the review and approval of the Architectural Review Board and shall be undertaken only by qualified persons having adequate equipment to properly protect and preserve such trees.

Section 5.04. Completion of Construction. All construction upon a Site shall be completed in strict accordance with the approved Site Development Plan. Each Site shall be kept and maintained in a sightly and orderly manner during the period of construction. All construction vehicles, other than those delivering materials or equipment, not fully contained within the site exclusive of swales shall park in the construction parking lot (Block A) or as designated by Declarant. No on-street parking shall be permitted. All builders will be required to utilize and pay for a thirty (30) cubic yard trash receptacle for each home during the period of construction in order to properly dispose of debris. Every builder or Owner shall be required to furnish a Port-O-Let for his or her workers during construction. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Site strictly in accordance with such approved plan or Architectural Review Board approved revisions

to the first approved plan. All hardscape shall be installed within thirty (30) days following substantial completion of the Residence if such completion occurs between April 1 and September 15; otherwise prior to June 1 of the following year. Non-ornamental trees and final grading shall be installed within fifteen (15) days following completion of the hardscape. Seeding of the lawn shall be completed by September 15 if final grading is completed by September 1. If final grading is not complete by September 1 seeding of the lawn shall be completed by May 15 of the following year. Ornamental tree installation shall be completed by May 1 of the first year following substantial completion of the Residence. The remainder of the landscaping shall be installed in accordance with the approved plan by June 1 of the first year following substantial completion of the residence.

The failure of the Owner of a Site to apply for approval of, or receive approval from, the Architectural Review Board of a Site Development Plan shall not relieve such Owner from his obligation to complete construction of a Residence upon the Site within the time period specified herein. For the purposes of this subparagraph, construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and yard light) has been completed in conformity with the Site Development Plan, this Declaration and any guidelines and standards of the Architectural Review Board in effect on the date of the Architectural Review Board's approval of the Site Development Plan.

Section 5.05. Storage Tanks. No storage tanks, of any nature, for any use, shall be allowed on the surface or be buried on any Site.

Section 5.06. Mailboxes. Except as hereinafter provided, all mail and delivery boxes will be located in the central mail facility and no mail boxes will be permitted on any Site in the Community. Notwithstanding the foregoing, if the Owners of two-thirds (2/3) of Sites (excluding Declarant, and with each Owner receiving one (1) vote for each Site owned by such Owner), but in no event less than seven (7) Owners, so consent, each Owner shall, in lieu of a central mail facility, maintain a mail box of a style and at a location approved by the Architectural Review Board on his Site. Such consent must be recorded by written instrument in the Office of the Recorder of Boone County, Indiana

Section 5.07. Driveways. No Site shall be permitted to contain more than one driveway and each Site shall be allowed only one cut onto the private roadway adjoining the Site. The driveway on each Site shall be cut and stone or gravel placed thereon prior to development or improvement of the Site to the extent necessary to avoid the transmittal of mud from construction traffic to the public roads. Upon substantial completion of construction, each driveway shall be constructed of hard mixed aggregate, concrete or concrete pavers, asphalt, brick or other material acceptable to Declarant.

A driveway constructed on any Site to and from the private roadway shall be constructed and maintained so as to provide the sole means of ingress and egress to such Sites for vehicular traffic. However, circular drives which provide more than one cut onto the private roadway may be allowed upon approval of the Declarant.

Section 5.08. Fences, Walls, Hedges or Shrub Plantings. No fence, wall, hedge or screening shall be erected, placed, altered or permitted to remain on any Site other than as approved (as to location, type, materials, design and height) by the Architectural Review Board under Article III of this Declaration. No chain link fence shall be erected upon a Site. No fence shall be erected or maintained on or within any Landscaping Easement except upon express written permission by Declarant. Declarant may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yards of certain Sites.

Section 5.09. Sewer and Water. The Community will be served by public sewer and water utilities. No individual septic systems or wells shall be allowed on the Sites in the Community.

Section 5.10. Ditches and Swales. The Owner of any Site on which any part of a private drainage tile, open storm drainage ditch or swale is situated shall keep such portion thereof as may be situated upon his Site or Sites continuously unobstructed and in good repair, and shall provide for the installation of such culverts upon said Sites as may be reasonably necessary to accomplish the purposes of this subsection, all at each such Owner's own cost and expense.

Section 5.11. Ponding and Runoff. No Owner shall cause or permit any pond to be created on any Site, including without implied limitation, from any swale, ditch, stream or creek located on the Real Estate. Further, Owner shall prevent water run-off and the depositing of soil and mud from the Site onto the street or through drainage swales through the use of silt fences installed entirely around the construction area during the home building process.

Section 5.12. Direct Broadcast Television. Receiver dishes of thirty-six (36) inches or less in diameter shall be permitted without prior written consent of Declarant. Such dish must be installed in such a location on the Site that it cannot be seen from the roadway or by any neighbor. No other antenna dish, tower or other free standing antenna structure or device shall be erected, placed or permitted to remain outdoors on any Site without prior written consent of Declarant or the Architectural Review Board. Declarant and/or the Architectural Review Board reserves the right to withhold permission for any reason.

Section 5.13. Subsurface Drains. Specific Sites within the Community have been provided access to drains that are connected to the Community storm sewer system. These drains are designed to provide an outlet for the flow from drainage water from sump pump discharges and downspouts if a storm sewer connection is not available on the Site. Gravity drainage from downspouts must be drained by piping into the storm sewer system if it is available on the site. In no situation shall the discharge from sump pumps or downspouts be outletted directly into the swales along the streets or onto the street surface. In the event of no availability of subsurface drains or storm sewer system on the Site the water from downspouts shall be dispersed onto the lawn area around the

home and allowed to flow naturally to drainage ways. All floor drains shall drain into the sewage disposal system of the home.

Section 5.14. Compacted Fill Material on Sites. Sites may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. The Declarant makes no representation, express or implied, as to the suitability of soil conditions for the purpose of foundation construction. The Owner of each Site is solely responsible for determining the suitability of soil conditions prior to the purchase of a Site and/or the commencement of construction.

Section 5.15. Treehouses and Playground Equipment. No treehouses will be allowed on any Site in the Community. Further, any and all playground equipment shall be made of wood as its primary building material. In no event shall any playground equipment be allowed that uses metal or plastic as its primary building material. The location and installation of any playground equipment shall be done only with the express written approval of the Declarant.

Section 5.16. Irrigation Systems. Owners of all sites shall be required to install underground front and side and rear yard irrigation systems in all turf and landscaped areas on their Sites. The installation of irrigation systems shall be installed contemporaneously with the Residence to be constructed on each Site and the landscaping installed therein. Irrigation supply pipes and sprinkler heads shall not be installed by the Site owner in the private roadway swales. No Owner's irrigation system may utilize water from either pond.

ARTICLE VI

Use and Maintenance of Sites

Section 6.01. Vehicle Parking. No camper, motor home, truck, trailer or boat may be parked or stored overnight or longer on any Site in open public view, except pick-up trucks or other similar vehicles customarily used by the Owners of suburban real estate parcels similar in size to the Sites contained herein. Further, no vehicles as set out above, including automobiles, light trucks or pick-ups, shall be parked or stored on the roadways or common area throughout the Community, except as set out in Section 5.04.

Section 6.02. Home Occupations. No home occupation shall be conducted or maintained on any Site other than one which is incidental to a business, profession or occupation of the Owner or occupant of such Site and which is generally or regularly conducted at another location that is away from such Site. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Site advertising a permitted home occupation.

Section 6.03. Signs. No sign of any kind shall be displayed to public view on any Site without the prior approval of the Architectural Review Board.

Section 6.04. Maintenance of Sites and Improvements. The Owner of any Site shall at all times maintain the Site and any improvements situated thereon in such a manner as to prevent the Site or improvements from becoming unsightly and, specifically, each such Owner shall:

(i) Mow such portion of the Site or Sites upon which grass has been planted at such times as may be reasonably required;

(ii) Remove all debris or rubbish;

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance;

(iv) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly.

Section 6.05. Animals. No animals shall be kept or maintained on any Site in the Community except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become an annoyance or nuisance. No exterior structure for the care, housing or confinement of any such pets shall be maintained. No animal may be confined by leash, fence, invisible fence, or other product in any front or side yard of the Site. No animal shall be kept or maintained on a Site for breeding, boarding, or any other commercial purpose. Any pet taken off the Site shall be confined on a leash. All Owners shall clean-up and remove any animal waste caused by his/her pet(s) within the Community.

Section 6.06. Garbage, Trash and Other Refuse. The outside burning of garbage or other refuse shall not be permitted on any Site, nor shall any outside accumulation of refuse or trash be permitted on any Site. Each single family dwelling house built shall be equipped with a garbage disposal unit, and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable.

Section 6.07. Nuisances. No noxious or offensive activity shall be conducted upon any Site, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner.

Section 6.08. Maintenance of Undeveloped and Unoccupied Sites. Owners of undeveloped or unoccupied Sites shall at all times keep and maintain such Sites in an orderly manner, causing weeds and other growths to be reasonably cut and shall prevent the accumulation of rubbish and debris thereon, provided, however, that Declarant or the Association may, at its option, perform the foregoing described maintenance with respect to all of the undeveloped or unoccupied sites, at the expense of the Owners thereof, who shall reimburse Declarant or Association, as the case may be, for the reasonable cost thereof upon receipt of an invoice therefor.

Section 6.09. Site Numbers. Declarant has prepared an approved design for a lighted Site number system as a part of a standard lamp post design, which shall be installed by Owners of Sites and be uniform throughout the Community.

Section 6.10. Noise. No Owner shall permit continuous or excessive noise, including, but not limited to the barking of dogs, stereo amplifier systems, television systems or excessively noisy motor vehicles to emanate from the Owner's Site, or the Common Areas and Blocks, which would disturb the quiet enjoyment of other Owners and residents. Without limiting the foregoing, lawnmowers, leaf blowers, snow blowers, chainsaws, other exterior maintenance equipment and construction work, may only be operated or performed by persons other than the Owner of the Site on weekdays between the hours of 9:00 a.m. to 5:00 p.m., except lawnmowers and snow blowers may be operated at other times when strictly necessitated by weather conditions. This Section 6.10 shall not apply to construction and development activities conducted by Declarant.

Section 6.11. Damage or Destruction by Owner. In the event any Common Area or Block, or any of the trees, improvements, or structures contained therein, is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Association to replace or repair said damaged area; the Association shall replace or repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved (or any tree of a size and type substantially similar to that damaged or destroyed), or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Site of said Owner.

ARTICLE VII

Easements, Common Areas and Blocks

Section 7.01. Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Boone County, Indiana, Sites, Common Areas and Blocks are subject to drainage easements, sewer easements, utility easements, ingress/egress easements, landscape maintenance easements, access easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Declarant, Owners, the Association, the Architectural Review Board, public utility companies and governmental agencies as follows:

> Drainage Easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Community and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Site. Under no circumstance shall said easement be blocked in any manner by the

construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

Sanitary Sewer Easements (S.S.E.) are created for the use of public utility or the local governmental agency having jurisdiction over any sanitary waste disposal system which may be designed to serve the Community for the purpose of installation and maintenance of sewers that are a part of said system.

Sewer Easements (S.E.) are created for the use of public utility or the local governmental agency having jurisdiction over any underground storm water drainage system which may be designed to serve the Community for the purpose of installation and maintenance of sewers that are a part of said system.

Utility Easements (U.E.) are created for the use of Declarant, the Association and all public or municipal utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sanitary sewer easements.

Drainage and Utility Easements (D&U.E.) combine Drainage Easements and Utility Easements.

Drainage, Utility and Sanitary Sewer Easements (D.U. & S.S.E) combine Drainage Easements, Utility Easements and Sanitary Sewer Easements.

Non-Access Easements (N.A.E) are created to preclude access from certain Sites, Common Areas or Blocks to abutting rights-of-way across the land subject to such easements.

Landscape Maintenance Access Easements (L.M.A.E.) are areas designated and created to contain signage, landscaping, decorative walls and structures, as well as Common Areas and Blocks of open space and to provide access to Declarant and/or the Association to maintain these areas. Other than those structures permitted by the Declarant and/or the Association, no Owner may erect any structure, permanent or temporary, within the L.M.A.E. or other Blocks or Common Areas within the Community.

Landscape Maintenance Easements (L.M.E.) are areas designated and created to contain signage, landscaping, decorative walls and structures, as well as Common Areas and Blocks of open spaces. Other than those structures permitted by the Declarant and/or the Association, no Owner

may erect any structure, permanent or temporary, within the L.M.E. or other Blocks or Common Areas within the Community.

Ingress/Egress Easements (I.E.E.) are created to afford public access over Block H to Sites and for all uses specified in the case of utility easements.

Power, Cable and Telephone Easements (P.C.T.E.) are created for the use of Declarant, the Association and all public or municipal utility companies for the installation and maintenance of power, cable and telephone ducts, poles, lines and wires.

Gas and Indianapolis Water Easements (G.I.W.E.) are created for the use of Declarant, the Association and all public or municipal utility companies for the installation and maintenance of water and gas mains, ducts, pipes, and lines.

Gas Easements (G.E.) are created for the use of Declarant, the Association and all public or municipal utility companies for the installation and maintenance of gas mains, ducts, pipes, and lines.

Indianapolis Water Company Easement (I.W.E.) are created for the use of Indianapolis Water Company and all public or municipal utility companies for the installation and maintenance of water mains, ducts, pipes and lines.

Power and Gas Easement (P.G.E.) are created for the use of Declarant, the Association and all public or municipal utility companies for the installation and maintenance of power and gas ducts, poles, lines, mains, pipes and wires.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Boone County, but a paved driveway necessary to provide access to a Site from Block H (and replacements thereof) shall not be deemed a "structure" for the purpose of this Declaration. Any party responsible for having work performed in an easement shall, following such work, return the affected area within such easement to the condition existing prior thereto at its cost and expense.

Section 7.02. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including but not limited to, police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, postal employees, utility company vehicles and personnel, privately owned delivery vehicles making deliveries to a Site, as well as pedestrian traffic are hereby granted the right to enter upon and use the private roadways throughout the Community in the performance of their duties, for deliveries, for ingress and egress, and for installation, replacement, repair and maintenance of all public utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electric except that package delivery vehicles are not permitted past the gates. The Community shall provide a gated entrance and shall ensure

electronic and other entry systems so to allow police, fire, ambulance and other emergency vehicle access.

Section 7.03. General Easement. There is hereby created a blanket easement over, across, through and under the Real Estate for ingress, egress, replacement, repair and maintenance of existing underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Real Estate and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. The exercise of this easement shall not unreasonably interfere with the use of any Site and, except in an emergency, entry onto any Site shall be made only after notice to the Owner or occupant. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Real Estate except as proposed and approved by Declarant prior to the conveyance of the first Site in the Real Estate to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on the Real Estate without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Real Estate, shall be limited to improvements as originally constructed, and shall not cover any portion of a Site upon which a Residence has been constructed.

The Owners shall take title to the Sites subject to the foregoing easement rights in, along and through the strips of ground properly designated as hereinabove set forth on the recorded Plat of the Community.

Section 7.04. Common Areas and Blocks. Subject to the approval of the Architectural Review Board, Declarant and/or the Association may install picnic areas, gazebos, landscaped areas and furniture or fixtures (other than buildings) intended for the common use or benefit of some, if not all, of the Owners and Association and internal signage in Blocks B, C and D and in the Common Areas.

Section 7.05. Block C. Block C, consisting of 15.441 acres, more or less, is hereby dedicated, in perpetuity, as Permanent Open Space. No permanent improvements are allowed within Block C other than walking paths, picnic areas, gazebos, landscaped areas and furniture or fixtures (other than buildings). Declarant may retain title to Block C, or convey title to Block C to the Association, the Town of Zionsville or a nonprofit corporation, governmental entity or conservancy district designated, in each case, by Declarant. So long as the Association reimburses Declarant for the costs of maintaining Block C as hereafter provided, access to Block C, including any walking paths constructed thereon, shall be permitted to Owners of Sites within Lost Run Farm and their guests subject to such rules and regulations as Declarant may deem appropriate, including but not limited to the prohibition of the use of all or some of the paths by bicycles, skateboards and/or motorized or non-motorized vehicles. Without limiting the

foregoing, Block C shall not be used for any illegal or immoral purpose. Declarant and its successors and assigns shall maintain Block C and the costs thereof shall be reimbursed by the Association within thirty (30) days after receipt of an invoice therefor. Declarant reserves the right to permit access to Block C to members of the public not otherwise owners of Sites within the Community. Declarant and its successors, assigns, licensees, invitees, contractors, agents and employees are granted a perpetual easement for pedestrian access through Block B to Block C (and for vehicular access but only to the extent required to construct walking trails or maintain Block C), provided that none of the foregoing benefited parties may construct any way through Block B without the express prior written consent of the Association.

Section 7.06. Private Roadways. The private roadways throughout the Community consisting of Lost Run Trail, Lost Run Lane, Lost Run Meadow, Woodard Place, and Woodard Bluff, consisting of Block H shall be owned and maintained by the Association. These private roadways shall remain non-public, non-dedicated roads, which are <u>not</u> maintained by the Town of Zionsville. As such, they do not meet the public road width and other design criteria required by the Town of Zionsville. In fact, variances and plat waivers have been granted by the Board of Zoning Appeals and Zionsville Plan Commission to allow these private roadways to be constructed. These roads shall remain private, in perpetuity. No parking, for any reason, shall be permitted on the roadways throughout the Community. A common parking area to be constructed in Block B shall be maintained by the Association and shall remain available to all Site Owners and their guests, for gatherings. The Declarant and/or Association shall have full and unrestricted enforcement of this No Parking restriction, including, but not limited to, towing of vehicles, without notice. Each Owner holds harmless the Declarant and/or the Association from any damages to any vehicle as a result of towing to enforce this restriction. Snow removal of private roadways shall be provided by the Association.

Section 7.07. Ponds. No boats shall be permitted upon any part of Ponds 1 or 2. No swimming will be permitted in either Pond. No dock, pier, wall or other structure may be extended into a Pond. No Owner's irrigation system may utilize water from either pond. Each Owner of a Site abutting a Pond shall indemnify and hold harmless Declarant, the Association and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Pond by any Person who gains access thereto from, over or across such Owner's Site. Declarant shall have no liability to any Person with respect to a Pond, the use thereof or access thereto, or with respect to any damage to any Site resulting from a Pond or the proximity of a Site thereto, including loss or damage from erosion. Notwithstanding anything herein or in any other document or instrument, or any marketing materials, Declarant makes no representation or warranty with respect to the level of water in any Pond from time to time. Without limiting the generality of the foregoing, any "pool elevation" shown on a plat shall be as estimated for engineering purposes only and shall not be deemed a representation or warranty.

ARTICLE VIII

General

Section 8.01. Waiver of Damages. Declarant, its respective owners, officers, directors, members, managers, nominees, representatives or designees, shall not be liable for any claim for damages whatsoever arising out of or by reason of any acts taken (or not taken) or things done or performed (or not done or performed) pursuant to any authorities reserved, granted or delegated pursuant to this Declaration, except for their own individual willful misconduct, bad faith or gross negligence.

Section 8.02. Enforcement. The right to enforce this Declaration and all covenants and restrictions contained herein, including, but not limited to, the right of injunctive relief, or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration, is hereby given and reserved to Declarant, the Owners from time to time of Sites, the Association, the Architectural Review Board and all parties claiming under the foregoing, all of whom shall have the right, individually, jointly or severally, to pursue any and all remedies, in law and equity available under applicable Indiana law, without being required to show actual damage of any kind whatsoever, and shall be entitled to recover, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof.

Section 8.03. Severability. The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

Section 8.04. Non-Liability of Declarants. Neither Declarant shall have any liability to an Owner or to any person or entity with respect to drainage on, over, under or through a Site. Upon the improvement and development of a Site, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Site, and each Owner by the acceptance of a deed to a Site, shall be deemed to and does thereby **RELEASE AND FOREVER DISCHARGE** each Declarant from, and shall **INDEMNIFY AND HOLD HARMLESS** each Declarant against, any and all liability arising out of or in connection with the handling, discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Site described in such deed.

Section 8.05. Public Liability and Property Damage Insurance. Each Owner shall obtain and pay for such public liability and property damage insurance as may be desired to provide protection against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property occurring on or about each such Owner's Site.

Section 8.06. Binding Effect. This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon and inure to the benefit of each Declarant, each Owner and any person, firm, corporation or other legal entity now or hereafter claiming an interest in any Site, Block or Common Area and their or its respective successors or assigns.

Section 8.07. Duration. This Declaration and the restrictions imposed hereby shall run with the Real Estate and shall be binding on all Owners and all persons claiming under them for an initial period of twenty-five (25) years from the date of recordation, and shall automatically extend for successive periods of ten (10) years each, unless prior to the expiration of the initial period of any ten (10) year period they are amended or changed.

Section 8.08. Amendments to Declaration. This Declaration may be amended or changed at any time with approval in writing by the Owners of at least sixty percent (60%) of all Sites herein and shall not become binding and effective until the date of recordation in the Office of the Recorder of Boone County, Indiana. Notwithstanding the foregoing, (i) prior to the Applicable Date, this Declaration may only be amended with the written consent of Declarant and (ii) neither this Declaration nor the Plat may be amended with respect to (x) Block A without the express prior written consent of Lost Run Farms, LLC or its successors and assigns as the owner of fee simple title thereto and (y) Block C without the express prior written consent of Declarant or its successors and assigns as the owner of fee simple title thereto. Declarant hereby reserves the right prior to the Applicable Date unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Boone County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Sites conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Section 7.03, Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Site which Declarant has previously conveyed without the consent of the Owner of such Site.

Section 8.09. Additions to Real Estate. Declarant shall have the right to bring within the scheme of this Declaration and add to the Real Estate real estate that is contiguous to the Real Estate. In determining contiguity, public rights of way shall not be considered. The additions authorized under this Section 8.09 shall be made by the filing of record of one or more supplemental declaration of covenants, conditions and restrictions extending the provisions of this Declaration with respect to the additional real estate, and which may contain such complementary or supplementary provisions as are required or permitted by this Declaration.

IN WITNESS WHEREOF, the undersigned has caused this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions to be executed on the day and in the year first above written.

HIGHGROVE DEVELOPMENT, INC.

By: Richard Summe
Richard Summe, President

By: R. Michael Henderson
R. Michael Henderson, Secretary-Treasurer

"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."

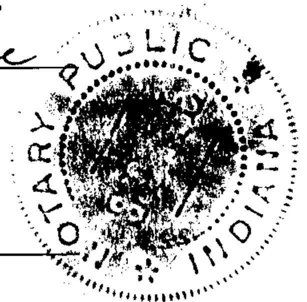
NAME: Mark E. Draper
Mark E. Draper

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public, in and for said County and State, personally appeared Richard Summe and R. Michael Henderson, as the President and Secretary-Treasurer, respectively, of **HIGHGROVE DEVELOPMENT, INC.**, who after having been duly sworn, acknowledged the execution of the foregoing Third Amended and Restated Declaration of Covenants, Conditions and Restrictions for and on behalf of such corporation.

Witness my hand and notarial seal this 17th day of August, 2006.

Charlene S. Lee
Notary Public



My Commission Expires:
July 6, 2014

County of Residence:
Hendricks

This instrument prepared by David R. Warshauer, attorney-at-law, 11 South Meridian Street, Indianapolis, Indiana 46204

No: 000357857

Exhibit "A"

LEGAL DESCRIPTION

A part of the Southwest and Southeast Quarter of Section 36, Township 18 North, Range 2 East, Eagle Township, Boone County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Southwest Quarter Section; thence North 89 degrees 01 minutes 28 seconds East (assumed bearing) along the North line of said Quarter Section 1, 524.56 feet to the POINT OF BEGINNING of this description; thence continuing North 89 degrees 01 minutes 28 seconds East along said North line 1,138.84 feet to the Northeast corner of said Southwest Quarter, said point also being the Northwest corner of the said Southeast Quarter Section; thence North 89 degrees 06 minutes 24 seconds East along the North line of the said Southeast Quarter Section 590.99 feet; thence South 20 degrees 02 minutes 17 seconds East 546.02 feet; thence South 20 degrees 21 minutes 17 seconds East 437.59 feet; thence South 21 degrees 11 minutes 07 seconds East 667.79 feet; thence South 89 degrees 37 minutes 19 seconds West 1,162.24 feet to a point on the West line of said Southeast Quarter, said point also being on the East line of Raintree Place, Section Two B recorded in Plat Book Six, Page Three, in the Office of the Recorder of Boone County, Indiana, the following two (2) courses on and along the northern boundary of said Raintree Place Section 2B; (1) North 00 degrees 20 minutes 46 seconds West along the West line of said Quarter Section, 221.94 feet to the Northeast corner of the Southeast Quarter of the Southwest Quarter of said Section 36; (2) South 89 degrees 09 minutes 31 seconds West along the North line of the Southeast Quarter of the Southwest Quarter of said Section 36, 1,325.54 feet to the Northwest corner of the Southeast Quarter of the Southwest Quarter; thence South 00 degrees 36 minutes 44 seconds East along the West line of the Southeast Quarter of said Southwest Quarter Section 767.82 feet; thence North 89 degrees 34 minutes 25 seconds West 514.33 feet to a point on the thread-line of Little Eagle Creek, the following Sixteen (16) calls being on said thread-line; (1) North 08 degrees 07 minutes 53 seconds East 221.53 feet; (3) North 12 degrees 51 minutes 18 seconds West 120.46 feet; (4) North 00 degrees 04 minutes 56 seconds East 50.76 feet; (5) North 49 degrees 34 minutes 43 seconds East 34.68 feet; (6) South 70 degrees 34 minutes 33 seconds East 31.21 feet; (7) South 50 degrees 16 minutes 46 seconds East 60.11 feet; (8) South 68 degrees 07 minutes 10 seconds East 57.66 feet; (9) North 50 degrees 31 minutes 49 seconds East 61.84 feet; (10) North 20 degrees 35 minutes 49 seconds East 124.34 feet; (11) North 49 degrees 19 minutes 55 seconds East 137.08 feet; (12) North 67 degrees 27 minutes 30 seconds East 71.75 feet; (13) North 32 degrees 07 minutes 45 seconds East 143.60 feet; (14) North 10 degrees 15 minutes 40 seconds West 118.21 feet; (15) North 17 degrees 57 minutes 58 seconds West 157.04 feet; (16) North 00 degrees 08 minutes 50 seconds West 69.50 feet; thence North 90 degrees 00 minutes 00 seconds East 40.07 feet; thence North 11 degrees 08 minutes 40 seconds East 294.89 feet; thence North 28 degrees 15 minutes 27 seconds East 274.05 feet to the said thread-line of Little Eagle Creek, the following Two (2) calls being on said thread-line; (1) North 34 degrees 01 minutes 12 seconds East 65.09 feet; (2) North 05 degrees 03 minutes 41 seconds East 185.28 feet to the place of beginning.

The above-described real estate is now known as:

Lots Numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21, Blocks B, C, D, E, F, G and H and Common Areas 1, 2, 3 and 4 in Lost Run Farm, a subdivision in Eagle Township, Boone County, Indiana, as per plat thereof recorded July 26, 2004 in Plat Book 15, Page 8 as Instrument No. 0409452, in the Office of the Recorder of Boone County, Indiana.