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## Declaration of Covenants, Conditions And Restrictions of Conner Crossing

This Declaration of Covenants, Conditions and Restrictions is made this 19<sup>th</sup> day of August, 2004, by Primrose Development LLC ("Declarant").

### WITNESSTH:

WHEREAS,

- A. Declarant owns, or has the right to acquire or develop the real estate located in Hamilton County, described in Exhibit "A" and depicted on Exhibit "B", upon which Declarant intends, but is not obligated, to develop a master planned residential Community to be known as Conner Crossing of Noblesville ("Conner Crossing").
- B. Declarant intends, but is not obligated, to develop within Conner Crossing, three (3) residential subdivisions to be known as Cottage Grove, Brookston and Silver Lake. The Declarant reserves the right to develop the subject property into more than three (3) subdivisions and to add additional property using the Conner Crossing name.
- C. Declarant intends, but is not obligated, to construct certain improvements and amenities in Conner Crossing which shall constitute the Common Area.
- D. Declarant desires to provide for the preservation and enhancement of property values, amenities and opportunities in Conner Crossing and for the maintenance of the Tract and improvements thereon and to this end desires to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and future owners thereof.
- E. Declarant deems it desirable, for the efficient preservation of the values and amenities in Conner Crossing, to create an entity to which may be delegated and assigned the powers of owning, leasing, maintaining, and administering the Common Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the Owners of the Lots in Conner Crossing. Declarant has incorporated under the laws of the State of Indiana a not-for-profit corporation know as Conner Crossing Homeowners' Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, are subject to the following Restrictions, and amendments thereto, all of which are declared to be the furtherance of a plan for the improvement and sale of Lots in the Tract, and are

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established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and each of the Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1. Definitions. The following terms, as used in the Declaration, unless the context requires otherwise, shall mean the following:

“Applicable Date” means the earlier of (i) the date when all Lots in the Development Area have been sold or (ii) such earlier date as determined by Declarant.

“Architectural Control Assessment” means the assessment levied by the Corporation pursuant to Paragraph 15(e).

“Architectural Review Board” means that entity established pursuant to Paragraph 16 of this Declaration for the purposes therein stated.

“Articles” means the Articles of Incorporation of the Corporation, as amended from time to time.

“Assessment” means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the Bylaws.

“Board of Directors” means the governing body of the Corporation elected by the Members in accordance with the Bylaws.

“Bylaws” means the Code of Bylaws of the Corporation, as amended from time to time.

“Common Area” means (i) the Lake(s), (ii) the Entryways, (iii) the Community Center, including the pool, clubhouse, parking lot and associated grounds, (iv) the Parks and open space, (v) the Drainage System, (vi) the Paths, (vii) Private Street Signs, signs and sign structures and associated landscaping and lighting and Sign and Landscape Easements, (viii) Street Trees, (ix) Street Lights, (x) preserved nature areas designated in the Common Area, (xi) the utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Parcel, and (xii) any areas of land designated as Common Area or Common Area Buffer Yard (1) shown on any Plat, (2) described in a any recorded instrument prepared by Declarant or its agents, as a Common Area or Common Area Buffer Yard, or (3) conveyed to, acquired by, or leased by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Common Area Access Easement" means the area designated on a Plat as means of access to a Common Area.

"Common Area Buffer Yard" means the area designated on a Plat and may be landscaped to create a buffer from a road or adjacent property.

"Common Area Initial Assessment" means the initial assessment as required by Paragraph 15 (c) to be used for the purposes set forth therein.

"Common Facilities" means the Common Area Lighting, the Site Furniture and Facilities and other personal property of the Corporation, either leased or owned, and shall include entryways, directional and roadway signs.

"Common Lighting" means the light standards, wiring, bulbs and other appurtenances, if any, installed to illuminate Little Chicago Road and 191<sup>st</sup> Street, entryways, internal streets and/or the Common Area.

"Community Center" means such of the land depicted as "Community Center" on the General Plan of Development as Declarant may make available as a site for development of recreational and other community facilities or, if such site is so developed, the land designated on a Plat as the "Community Center" together with all improvements thereto and structures and facilities thereon.

"Corporation" means Conner Crossing Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means Primrose Development LLC, its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assumes the rights and obligations of Declarant)

"Detention Area" means an area depicted on the Plat which has been engineered to accommodate from time to time, storm water drainage.

"Development Area" means the land described in Exhibit A together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

"Drainage Board" means the Noblesville Board of Public Works and/or the County Drainage Board, and any other governmental agencies specifically involved with the regulation of storm water drainage, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet detention and/or detention ponds (including all Detention Areas), and the other structures, fixtures, properties, equipment and facilities

located in the Tract and designed for the purpose of controlling, retaining, or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Entryways" means the structures constructed as an entrance to Conner Crossing or a part thereof (exclusive of the street pavement, curbs, and drainage structures and tiles), traffic islands dividing a roadway providing access to Conner Crossing or a part thereof, lakes, landscaping, lighting, street furniture, signage and the grassy area surrounding such structures.

"General Assessment" means the assessment required under Paragraph 15 (b) to be used for the purposes set forth therein.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development, as such may be amended from time to time.

"Lake" means the lake(s) located in Conner Crossing to serve as water detention areas.

"Lake Access Easement" means the area designated on a Plat as a means of access to a Lake.

"Landscape Easement" means a portion of a Lot denoted on a Plat as an area that may be landscaped.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means (i) site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies 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.

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Operating Expenses" means (i) maintenance costs of and in connection with the maintenance, repair or replacement of the Common Area and the performance of the responsibilities and duties of the Corporation, including (without limitation) expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping not located on a Lot and trash removal service for all Lots, (ii) all judgments, liens and valid claims against the Corporation, (iii) all expenses incurred to procure liability, hazard and any other insurance with respect to the Common Area, (iv) all expenses incurred in the administration of the Corporation and (v) the Maintenance Costs.

"Owner" means a person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Parcel" means each of the subdivisions known as Brookston, Cottage Grove, Silver Lake and all Common Area, as well as any future additional platted subdivision within the Development Area that is subject to the same Supplemental Declaration or is declared by Declarant to constitute a "Parcel".

"Park" means such land as may be denoted on a Plat as "Park" or designated as "Park" in any recorded instrument executed by Declarant.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Person" means an individual, firm, corporation, partnership, association, limited liability company, trust or other legal entity, or combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area executed by Declarant and recorded in the Office of the Recorder of Hamilton County, Indiana

"Private Drive" means a street, lane, road, driveway or other right-of-way designed to provide access to one or more Lots that has not been accepted for maintenance by the public authority.

"Private Street Signs" means all signs installed along the streets in the Tract by Declarant and not maintained by a public authority, including without limitation, directional, informational, regulatory, warning and stop signs.

"Property Manager" means a professional person in the property management business hired by Declarant or Corporation to act out the direction of the Board of Directors of Corporation in the operation of the Corporation and management of the Common Area.

"Public Street" means any street shown on the secondary plats of Conner Crossing of Noblesville.

"Public Street Signs" means all signs installed in a public right-of-way and maintained by a public authority, including without limitation, directional, informational, regulatory, warning and stop signs.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area and the Common Facilities.

"Residence" means 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.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same from time to time may be amended.

"Roundabout" means the traffic circle located west of the entry from Little Chicago Road.

"Sign and Landscape Easement" means a portion of a Lot or Common Area denoted on the Plat as an area for entry signage, lighting and landscaping.

"Site Furniture and Facilities" means any furniture, trash containers, sculpture, or other furniture, fixtures or equipment or facilities constructed, installed or placed in the Development Area by Declarant or the Corporation and intended for the common use or benefit of some, if not all, of the Owners.

"Street Trees" means the trees planted by Declarant within the rights-of-way of public streets (including medians thereof) within and adjacent to Conner Crossing, as the same may be replaced from time to time by the Corporation.

"Supplemental Declaration" - Means the Supplemental Declarations of Covenants and Restrictions for each of Cottage Grove, Brookston, Silver Lake and other Supplemental Declaration of covenants, conditions, restrictions which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Parcel and contains such complimentary or supplementary provisions for such Parcel as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit "A" and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Village" means each of the subdivisions developed by Declarant within the Tract.

"Zoning Authority" with respect to any action means the Director of the Department of Planning, City of Noblesville ("Director") or, where the Director lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under the applicable law to hear appeals from, or

review the action, or the failure to act, of the Director.

2. Declaration. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of the deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.
3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights-of-way shall not be considered.
4. Lakes.
  - (a) Development. Declarant intends, but is not obligated to develop the Lakes. Declarant reserves the right, subsequent to commencement of development of the Lakes, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit "C" hereto. Declarant has created the various lakes as an integral part of the storm water system approved by the City of Noblesville and Hamilton County. Consequently, the lake levels will fluctuate from time to time and the Declarant makes no representation about the water level of the lakes.
  - (b) Title and Maintenance. Declarant shall convey title to the Lakes to the Corporation but no sooner than the date when all loans which are a lien on the property are retired. In the interim period the Corporation will lease the Lakes from Declarant, along with other Common Area, for \$1.00 and other valuable consideration. The Corporation shall be responsible for maintaining the Lakes and for all related taxes, insurance, and other operational expenses. The Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment. Such assessment may be in addition to any legal drain assessment. Each Owner of a Lot that abuts a Lake shall be responsible at all times for keeping the portion of the Lake abutting the Owner's Lot free of debris and in reasonably clean condition.
  - (c) Use. No boats shall be permitted upon any part of any Lake except if, and to the extent authorized by the Board of Directors, and then subject to such rules and regulations as may be adopted by the Board of Directors. This, however, will not exclude a boat used by an approved vendor to accomplish maintenance or chemical treatment approved by the Board. No dock, pier, wall or other structure may be

extended into a Lake without prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereof. No swimming or ice skating or other recreational activities on or in the Lakes except fishing will be permitted to the extent authorized by the Board of Directors and the Declarant, as long as Declarant retains title to the Lakes. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Corporation 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 Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any person with respect to a Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

5. The Common Area Declarant shall convey title to the Common Area to the Corporation once the Declarant has retired all liens which are the result of land and development loans. Declarant may convey title to the Common Area at an earlier time as determined by Declarant. Once the Corporation has an interest conveyed by deed or leasehold interest, the Corporation shall be responsible for maintaining the Common Area and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Corporation shall be responsible under either fee simple interest or a leasehold interest to pay for all taxes, insurance and other operational expenses related to the Common Area. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Common Area other than lighting, seating, walkways, permanent directional signage installed by the Declarant or the City of Noblesville, plant structures (e.g. flower boxes) and fountains or other non-recreational water features. The use of the Common Area shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of the Declaration or any Supplemental Declaration(s).
6. Parks Declarant shall initially lease the Parks, if any exist, to the Corporation for \$1.00 and other valuable consideration. Upon the retirement of all liens resulting from land and development loans, the Declarant will convey any Parks to the Corporation. The Corporation shall be responsible for maintaining the Parks. The Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. Whether leased or owned the Corporation will be responsible for all taxes, insurance, and other operational expenses. The use of the Parks shall be subject to rules and regulations adopted by the Corporation which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.
7. Community Center Declarant intends, but is not obligated, to construct in the area designated on the General Plan of Development as the Community Center, a clubhouse, bath house, swimming pool, and other recreational amenities and community facilities, if development of the Development Area should, in the sole judgment of the Declarant, justify such construction. If Declarant undertakes the development of the Community Center or any part thereof, Declarant intends upon completion of construction to lease the



premises to the Corporation, and, at such time as all loans which are a lien on the property are removed by retirement of the debt, convey the fee ownership to the Corporation free and clear of all financial encumbrances and other liens securing indebtedness of the Declarant but subject to the right of the Declarant to use the Community Center as provided in Paragraph 20(a). The Corporation shall be responsible for maintenance of the Community Center and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Community Center as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation, or charge shall be inconsistent with the provisions of this Declaration or any Supplemental Declaration. Nothing shall preclude Declarant and/or the corporation from selling swimming memberships to persons residing outside of Conner Crossing. All funds generated shall be used to offset operation expenses of Common Facilities.

8. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lakes. The Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance for any drainage system located entirely on the Owner's Lot which is devoted exclusively to drainage of the Owner's Lot and is not maintained by the Drainage Board.
9. Entryways and Landscape Easements.
  - (a) Entryways. The Corporation shall maintain the Entryways and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs, and other plantings located on an Entryway shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Conner Crossing or a part thereof. All entrance signs and other improvements located in an Entryway shall be maintained at all times in good and sightly condition appropriate to a first class residential subdivision.
  - (b) Landscape Easements. Unless the Board of Directors determines that all or some of the Landscape Easements shall be maintained by the Corporation and the Maintenance Costs thereof assessed as a General or Parcel Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located in the Landscape Easement neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in good and sightly condition appropriate to a first-class custom residential development and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.
10. Common Lighting. Declarant may, but is not obligated to, install Common Lighting in the Tract, including street lights, and may reserve easements for such purpose over and

across Lots. If installed, the Corporation shall operate and maintain the Common Lighting, and the Maintenance Costs and all other fees associated with the lighting, including rental fees, if any shall be assessed as a General Assessment against all Lots subject to assessment.

11. Common Irrigation. Declarant may, but is not obligated to, install common irrigation systems in the Tract and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the common irrigation systems, and the Maintenance Costs and all other fees associated with the irrigation shall be assessed as a General Assessment against all Lots subject to assessment.
12. Site Furniture and Facilities. Declarant may, but is not obligated to, construct, install or place Site Furniture and Facilities in the Tract. If it does so, the title thereto shall be conveyed to the Corporation, provided the land and fixtures are not security for loans. Once the subject loans have been retired, conveyance will occur. After conveyance or leasing to the Corporation, the Corporation shall be responsible to maintain and insure the Site Furniture and Facilities and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.
13. Roundabout, Street Trees and Street Signs. The Corporation shall maintain the Roundabout (exclusive of street pavement, curbs and drainage structures and tiles), the Street Trees and the Street Signs and all other landscaping and landscape elements, if any, (including replacement of such trees as appropriate), and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.
14. Conner Crossing Homeowners' Association, Inc.
  - (a) Membership. Each Owner shall automatically be a Member of the Corporation and shall enjoy the privileges and be bound by the obligations contained in the Articles and Bylaws. If a person holding a security interest in a Lot, takes possession of or title to a Lot, that Person shall become an Owner and 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 Assessment. Any renters of a home within the Tract shall not be Members, but shall be obligated to comply with these Declarations.
  - (b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles and Bylaws, together with all other powers that belong to it by law.
  - (c) Classes of Membership. There shall be two classes of membership.
    - (i) Class A. Class A Members shall be all lot owners subject to this Declaration and the Articles and Bylaws of the Corporation. Class A Members are entitled to one (1) vote per Lot. When more than one Person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Two or more lots that have been replatted to create

a single lot shall be treated as a single lot and have one (1) vote.

- (ii) Class B. The Class B Member(s) shall be the Declarant, who shall be entitled to one (1) vote for each Lot in Conner Crossing until such time as the Declarant owns no Lots or decides to surrender its Membership and turn over complete control of the Corporation to the Class A members, whichever date is earlier.
- (d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and Bylaws.
- (e) Maintenance Standards. In each instance in which this Declaration imposes on the Corporation a maintenance obligation with respect to the Common Area or a part thereof, the Corporation shall maintain the Common Area 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 first-class custom residential subdivision. Grass, trees, shrubs and other plantings located on the Common Area for which the Corporation 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 first-class residential subdivision.
- (f) Limitations on Action by the Corporation. Unless at least two thirds of the Mortgagees (based upon one vote for each first mortgage) or two thirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 17, by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area (but granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage insurance on insurable Common Area on a current replacement cost basis in the amount of one hundred percent (100%) of the insurable value (based upon current replacement cost); (iii) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the Common Area; (iv) change the method of determining the obligations, assessments, dues, or other charges that that may be levied against the Owner of a Residence; (v) by act or omission, change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Common Area; or (vi) fail to maintain the Reserve for Replacements in an amount required by this Declaration or any Supplemental Declaration and as determined by the Corporation Board of Directors.
- (g) Mergers. Upon merger or consolidation of another corporation with the Corporation, its properties, rights, and obligations may, as provided in its Articles of Incorporation or, 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 Corporation 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 Tract 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 Tract except as hereinafter provided.

15. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments.

Declarant hereby covenants, and each Owner of any Lot by acceptance of the deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) the Common Area Initial Assessment, (3) Annual and Special Parcel Assessments, (4) Architectural Control Assessments (to be the extent levied), (5) Special Assessments and (6) Administrative Assessment, such Assessments to be established and collected as hereinafter provided. If two (2) or more Lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat, or if a Lot is divided by conveyance or portions thereof to owners of adjacent Lots, then, in either such event, the vacated or divided Lot(s) shall cease to be Lots for purposes of Assessments under this Paragraph 15. 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 Lot 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 Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the Lots and for the improvement, maintenance, repair, replacement and operation of the Common Area and Common Facilities and payment of the Operating Expenses.

(ii) Basis for Assessment.

- (1) Lots Generally. Each Lot owned by a Person other than the Declarant shall be assessed at uniform rate without regard to whether a Residence has been constructed upon the Lot.
- (2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation.
- (3) Lots Owned by Builders. All builders will be subject to annual Assessment. The builder will be required to pay the annual Assessment until such time that a new owner takes ownership of the Lot and/or

Residence. Upon the sale and closing of the subject Lot, the Purchaser shall be Assessed on a prorated basis commencing assessment on the date which closing occurs.

- (4) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors such change is approved by (i) two thirds of the vote of the Membership or (ii) two thirds of the Mortgagees (based upon one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.
- (iii) Method of Assessment. By vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each calendar year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid. However, in no event shall assessments be paid more frequently than quarterly.
- (iv) Initial Assessment. The initial General Assessment shall be Seven Hundred Ninety-five Dollars (\$795.00) per year until changed by the Board of Directors as provided herein.
- (c) Common Area Initial Assessment. In order to establish funds for Operating Expenses and for future expenses, each purchaser of a Lot shall at the time of closing pay a one-time Five Hundred Dollars (\$500.00) Common Area Initial Assessment fee which shall be deposited in an interest bearing account in the name of the Corporation. The Board of Directors shall be responsible to maintain the account by the allocation and payment to such account of an amount determined annually by the Board to be sufficient to meet the cost of projected repairs, replacement, and renewal of the Common Area and Common Facilities. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area and the Common Facilities, 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 account shall be deposited in a special account with a lending institution the accounts 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 account may be withdrawn and applied at the discretion of the Declarant to meet the costs of maintenance, repairs, renewal or replacement of the Common Area and the Common Facilities.
- (d) Parcel Assessments.
- (i) Purpose of Assessments. Parcel Assessment shall be used for such purposes as

are authorized by the Supplemental Declaration for each Parcel.

- (ii) Method of Special Assessment. An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board shall fix in accordance with this Declaration and the provisions of any Supplemental Declaration the annual parcel assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.
- (iii) Special Assessments. In addition to the annual Parcel Assessment, the Corporation may levy in any calendar year a special Parcel Assessment against one or more of the Lots in a Parcel for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that such Assessment shall have the consent of a majority of the Owners of all Lots in the Parcel at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel.
- (e) Architectural Control Assessment. If any Owner fails to comply with the requirements, concerning construction of a Residence, a Supplemental Declaration related to the Parcel in which such Owner's Lot is located and/or the provisions of Paragraph 16 of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Ten Thousand Dollars (\$10,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in a manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to the Declarant and/or Corporation provided in this Declaration, at law or in equity in the case of failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.
- (f) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to the year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the consent of a majority of all the Members whose Lots are subject to Assessment with respect to the capital improvement.
- (g) Administrative Assessment. Each Lot shall be subject to an Administrative Assessment upon any subsequent sale of a Lot after the initial sale from the Declarant

to the initial purchaser for purposes of administering the books and records of Corporation and Property Manager and issuing certificates as set forth in these Declarations. The initial Administrative Assessment shall be One Hundred Dollars (\$100.00) payable at the time of closing on the Lot. This amount may be increased by the Corporation to cover any increase in costs in the future. The Administrative Assessment may be invoiced by the Corporation or the Property Manager directly.

- (h) Date of Commencement of Assessments. The General Assessment and Parcel Assessments shall commence with respect to assessable Lots within a Parcel on the date of conveyance of the first Lot in the Parcel to an Owner who is not the Declarant. The first General Assessment and Parcel Assessment on any assessable Lot shall be calculated commencing on the date which the Lot is closed and prorated for the remaining calendar year and paid at the time of closing..
- (i) Effect of Nonpayment of Assessments: Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate equal to the lesser of the Prime Rate plus four percent (4%) as set forth in the Wall Street Journal or similar publication, if the Wall Street Journal ceases to exist or the current statutory maximum annual interest rate and be subject to an annual late fee, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorney's fees, property manager's fees, or other fees related to the collection of the debt. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or the Common Facilities or abandonment of the Owner's Lot.
- (j) Subordination of the Lien to Mortgages. The lien of the Assessments for herein against a Lot shall be subordinated to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.
- (k) Certificates. The Corporation shall, upon request by an Owner, at any time, furnish a certificate in writing signed by an Officer of, or the Property Manager for the Corporation, that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be. The Corporation may charge an Administrative Assessment for the issuance of this certificate.

- (l) Annual Budget. By majority vote of the Board of Directors during its fall meeting, the Board will create and adopt an annual budget for the subsequent calendar year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met. The annual budget will provide for a "reserve line" that will contribute to the Reserve Account.

16. Architectural Control.

- (a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons shall be appointed by the Declarant. After the Applicable Date, the Corporation Board shall appoint a Board consisting of at least one (1) representative from each Village to perform architectural reviews and approvals.
- (b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Tract and of the improvements thereon in such a manner as to preserve and enhance values, to maintain a harmonious relationship among structures, improvements, and the natural vegetation and topography and to assert the conditions of the zoning ordinance and other governmental approvals.
- (c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other modification that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefore. Prior to the commencement by any Owner other than Declarant or of (i) construction, erection, or alteration of any Residence, other building, fence, wall, swimming pool, tennis court, patio or other structure on a Lot or (ii) any plantings or exterior lighting on a Lot, two (2) sets of a Lot Development Plan and other pertinent detail related to the proposed improvement, such as elevation, material, color(s) and samples as may be requested with respect thereto shall be submitted to the Architectural Review Board, and no Residence, other building, fence, wall, swimming pool, tennis courts, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any other plantings made or exterior lighting installed, by any Person other than the Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration, plantings, or lighting. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits, and/or variances required by law from governmental authorities having jurisdiction over Conner Crossing, and no Owner shall undertake any construction activity with Conner Crossing unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this Subparagraph (c), "plantings" does not include flowers, bushes, shrubs, or



other plants having a height of less than eighteen (18) inches.

- (d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing Lot Development Plan within thirty (30) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed approved. However, the Owner shall be responsible for the Lot Development Plan complying with the Declaration and any Supplemental Declaration.
- (e) Guidelines and Standards. 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 the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration and/or any governmental approvals and conditions.
- (f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board, if resubmitted.
- (g) Design Consultants. The Architectural Review Board may utilize the services of architects, engineers, and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated that Declarant or a Designated Builder or may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.
- (h) Existing Violations of Declarations. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of this Paragraph 16, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping, or exterior lighting constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot 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. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against an Owner who fails to comply with the requirements of a

Supplemental Declaration or Paragraph 16 of this Declaration. 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 Lot Development Plan for approval by the Architectural Review Board has violated the provisions of a Supplemental Declaration or Paragraph 16 of this Declaration and such violation remains uncured.

- (i) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. 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.
- (j) Liability of the Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it 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.
- (k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.
- (l) Improvements in Common Area or Right-of Ways. To assure architectural continuity, any improvements, including without limitation, landscaping, lighting and irrigation within the Common Area or right-of-ways will be reviewed and approved by the Connor Crossing Architectural Review Board.

17. Common Area and Common Facilities.

- (a) Ownership. The Common Area and the Common Facilities shall remain private, and neither Declarant's execution or recording of an instrument portraying the Common Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area or the Common Facilities. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Common Area or the Common Facilities to any public agency, authority or utility for use as roads, utilities, parks or other public purposes. Furthermore, nothing shall preclude the Declarant or the Corporation from selling annual limited memberships to parties residing outside of Connor Crossing. The fee for such membership shall be set by the Declarant or the Corporation's Board.

- (b) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Common Area or any facilities thereon.
- (c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including Common Facilities and other furnishings and equipment related thereto), and except as otherwise provided herein or in a Supplemental Declaration, shall keep the Common Area and Common Facilities in good, clean, attractive and sanitary condition, order and repair.
- (d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Common Area except to the extent granted by, and subject to the terms and provisions of, this Declaration, any Supplemental Declaration or any recorded plats of the Tract. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Parks, the Community Center and the Common Area subject to the reserved rights of Declarant and the Corporation. The Owners of Lots abutting the Lakes may use the Lakes only as provided by this Declaration and any Supplemental Declaration.

Lakes shall be accessible to the residents of Conner Crossing only where common area paths, trails or sidewalks provide access. No one shall be entitled to cross private property abutting a Lake in order to achieve access where no access easement exists.

- (e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:
- (i) the right of the Corporation to establish reasonable rules for the use of the Common Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Common Area except that no fee shall be charged to those specifically authorized to use such facilities by the Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by the Declaration or a Supplemental Declaration;
  - (ii) the right of the Corporation to suspend the right of an Owner and any Person claiming through the Owner to use the Paths, the Lakes, the Community Center or the Common Area for any period during which any Assessment against the Owner's Lot remains unpaid for more than thirty (30) days after notice;
  - (iii) the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Paths, the Lakes, the Community Center or the Common Area for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations until the infraction is remedied;

- (iv) the right of the Corporation to mortgage any or all of the Common Area, the facilities constructed thereon and the Common Facilities for the purposes of improvements, or repair of, the Common Area, the facilities constructed thereon or the Common Facilities, pursuant to approval of two-thirds (2/3) of all Members (excluding Declarant) or two-thirds (2/3) of all the Mortgagees, at a regular meeting of the Corporation or a meeting duly called for this purpose;
  - (v) the right of the Corporation to dedicate or transfer all or any part of the Common Area and/or the Common Facilities to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members or two-thirds of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and
  - (vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of the Common Area and/or Common Facilities located in a Parcel to (a) Owners of Residences located in such Parcel or (b) to other Owners of less than all of the Lots in the Tract.
- (f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Common Area and the Common Facilities may use the Common Area and the Common Facilities subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations, including charging a guest fee for the use of the Community Center.
- (g) Damage or Destruction by Owner. In the event the Common Area or any Common Facility is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. 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 Lot of said Owner.
- (h) Conveyance of Title. Declarant may retain the legal title to the Common Area and the Common Facilities until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Lakes, the Community Center, the Common Area and the Common Facilities to the Corporation, 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. Until such time that the Declarant can and does convey title, the aforementioned properties shall be considered Common Area via a lease agreement between the Declarant and the Corporation.

18. Use of Tract

(a) Protective Covenants.

(i) Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Conner Crossing than the number of the original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single-family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be detrimental to any other Lot in the vicinity thereof or its occupants.

(iii) Other Restrictions. The Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 16(b) and to supplement any covenants or restrictions set forth in a Supplemental Declaration, 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, play structures and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel, which rules and regulations may vary among Parcels. Such general rules may be amended by two-thirds (2/3) votes 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 two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

(iv) Exceptions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Tract. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots owned by Owner, and all improvements thereon, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of

all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation after notice to the Owner as provided by the Bylaws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair, or restoration shall become a Special Assessment upon such Lot.

19. Easements.

- (a) Plat Easements. In addition to such easements as are created elsewhere in the Declaration or in Supplemental Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots may be subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, lake easements, Community area access easements, pathway easements, and non-access easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:
- (i) Drainage Easements. Drainage Easements ("DE") 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 Conner Crossing and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across the Owner's Lot. 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 water flow. 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.
- (ii) Sewer Easements. Sewer Easements ("SE") are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Conner Crossing for the purpose of installation and maintenance of sewers that are a part of said system.
- (iii) Utility Easements. Utility Easements ("UE") are created for the use of Declarant, the Corporation and all public municipal utility companies, not including transportation companies, for the installation and maintenance of

mains, ducts, poles, lines, pipes, and wires, as well as for the uses specified in the case of the sewer easements.

- (iv) Entryway Easements. Entryway Easements ("EWE") area created for the use by the Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of Entryways.
  - (v) Landscape Easements. Landscape Easements ("LE") are created for the use by Declarant, the Architectural Review Board and the Corporation, and in special instances for the benefit of Pebble Brook Golf Course, for the planting and maintenance of trees, shrubs, and other plantings.
  - (vi) Lake Access Easements. Lake Access Easements ("LAE") are created for the use of the Declarant, the Corporation, the Drainage Board and the City of Noblesville for the purpose of gaining access to the Lakes in the course of maintenance, repair, or replacement of any thereof.
  - (vii) Common Area Access Easements. Common Area Access Easements ("CAE") are created for the use of the Declarant and the Corporation for the purpose of gaining access to the Common Area in the course of maintenance, repair or replacement thereof and for the use of the Owners for the purpose of gaining access to such Common Area to enjoy the use thereof to the extent authorized herein.
  - (viii) Non-Access Easements. Non-Access Easements ("NAE") are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. 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 drainage, sewer or utility 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 Hamilton County, Indiana, but a concrete driveway necessary to provide access to a Lot from a public street or Private Drive and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.
  - (ix) Sign and Landscape Easements. Sign and Landscape Easements ("S&LE") are created for the use by Declarant, the Architectural Review Board and the Corporation for entryway signs, lighting and landscaping and shall be maintained by the Corporation.
- (b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair, maintenance of 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 to install and maintain facilities and equipment on the Tract 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. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section or Parcel except as proposed and approved by Declarant, prior to the conveyance of the first Lot. Any utility furnishing a service covered by the general easement herein may request a specific easement by separate recordable document, and Declarant or the Corporation, whomever shall be legal owner at the time, shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

- (c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Common Area in the performance of their duties.
- (d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.
- (e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, paths, Lake Access Easements and Common Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other paving, other than crossings, driveways, walkways, paths, Lake Access Easements or Common Area Access Easements, and neither Declarant, nor any utility company using the easements, shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.
- (f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Parcel, Declarant reserves a blanket easement and right on, over and under ground within that Parcel to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil or to take any other similar action reasonable necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice. Declarant may assign this right.
- (g) Water Retention. The owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention or retention) of storm water within the drainage easements (DE) on such Owner's Lot.



20. Use of Lots During Development.

(a) By Declarant Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors, or any builder with the consent of Declarant, may maintain during the period of construction and sale of Lots and Residences on the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant or any builder, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sale offices. Declarant specifically reserves the right to maintain a sales office in, and make other use of, the Community Center during the period that it is engaged in the sale of Lots in Conner Crossing. Such use shall be at no charge to the Declarant.

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Conner Crossing may, with prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, Lots and/or land yet to be developed adjacent to or in proximity to such model home may be used for parking by visitors to such model home; however, the builder shall be responsible for maintenance and liability regarding use of the Lot.

21. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

22. Limitations on Rights of the Corporation. Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on behalf, of the Corporation.

23. Approvals by Declarant. Notwithstanding any other provision hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant; the addition of real estate to the Tract; dedication or transfer of the Common Area; mergers and consolidations of Parcels within the Tract or of the Tract with other real estate; mortgaging of the Common Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Common Area Initial Assessment.

24. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors, or the Private Property Manager, if one exists, of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary or Property Manager and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, any Supplemental Declaration, the Articles or Bylaws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the Secretary or Property Manager, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notice to Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice to any of the following:

- (i) Any condemnation or casualty loss that affects a material portion of the Common Area;
- (ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;
- (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagee; and,
- (v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Common Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto (B) the vote appertaining to

a Residence or (C) the purposes for which any Residence or the Common Area are restricted.

- (c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed Mortgagee, or a proposed purchaser who has contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, not shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.
- (d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.
- (e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof, and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

25. Amendments.

- (a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of all Members of the Corporation at a meeting duly called for the purpose of amending this Declaration and, (ii) to the extent required by Paragraph 23, Declarant.
- (b) By Declarant. 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 Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at such time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 19(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish easements through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.
- (c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

26. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used

as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

27. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, the Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until December 31, 2025, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of the majority of the Lots in the Tract.
28. Severability. Every one of the Restrictions is hereby declared to be independent of, severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall have no effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.
29. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence. An Owner, by acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations, or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or implied warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.
30. Compliance with the Soil Erosion Control Plan
- (a) The Plan. Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associate with Construction Activity. In connection with any construction activity on a Lot by an Owner, its contractor or the subcontractors of either, Owner shall take or cause to be taken all erosion control measures contained in such plan, as the plan applies to "land disturbing activity" undertaken on a Lot and shall comply with the terms of Declarant's general permit under Rule 5 as well as all other applicable State, county, or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) Indemnity. The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands, and actions of any nature whatsoever, including Declarant's costs, expenses and attorney fees, which may arise out of or are connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant

31. Construction Cleanup. Each Owner and the Owner's builder shall assume total responsibility for 1) proper management and disposal of trash, concrete "clean-out areas", palettes, wood, brick, stone, soil stockpiles and other materials generated during the construction process, including clean-up of Lots in proximity to the construction site that have been impacted by such debris, (2) mowing and weed control of Owner's Lot, (3) regrading of adjacent Lots that were impacted by construction (e.g.- vendors making deliveries across adjacent Lots) and (4) compliance with Rule 5 of 327 IAC 15, Storm Water Run-Off Associate with Construction Activity, including the removal of mud from streets during the construction process.

32. Inspection of Lot Property Prior to Construction. THE OWNER OF EACH LOT IS ENTIRELY RESPONSIBLE FOR THOROUGHLY RESEARCHING THE SUITABILITY OF THE SUBJECT LOT FOR ITS INTENDED USE. THIS SHALL INCLUDE, BUT NOT NECESSARILY BE LIMITED TO INSPECTION AND ANALYSIS OF SOIL AND SUB-SOIL CONDITIONS. IT SHALL BE THE OWNER'S FULL RESPONSIBILITY TO PERFORM ANY SOIL AND COMPACTION TESTING THAT MAY BE NECESSARY OR APPROPRIATE IN ORDER FOR OWNER TO DETERMINE WHAT SUB-SURFACE SOIL CONDITIONS EXIST SO THAT APPROPRIATE MEASURES CAN BE TAKEN, AT OWNER'S COST, TO ENSURE THAT ANY IMPROVEMENTS CONSTRUCTED ON THE LOT WILL BE SUPPORTED ON ADEQUATE FOUNDATIONS, FOOTINGS, PILINGS, OR OTHER STRUCTURAL SUPPORT DEVICES AND THAT ANY TYPE OF BASEMENT OR SUBTERRANEAN LIVING OR STORAGE AREAS DESIRED CAN, IN FACT, BE CONSTRUCTED ON THE LOT.

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IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

**PRIMROSE DEVELOPMENT LLC**

By: C William Wright

Printed: C WILLIAM WRIGHT

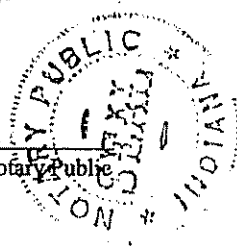
Title: SEC

STATE OF INDIANA                    }  
  }SS:  
COUNTY OF HAMILTON            }

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared C William Wright, the Secretary of Primrose Development LLC, who acknowledged the execution of the above and fofoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 19 day of August, 2004.

Suzanne D. Miller  
Printed: Suzanne D. Miller, Notary Public



Notary Public Residing in marion County  
My Commission expires: 2/18/2009

This document prepared by Steven C. Robinson, Robinson Wolenty & Young, LLP,  
8888 Keystone Crossing, Suite 710, Indianapolis, Indiana 46240.

DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPMENT AREA

EXHIBIT A  
CONNER CROSSING  
LEGAL DESCRIPTION

A part of the Southeast Quarter of Section 28, and the Northeast Quarter of Section 33, all in Township 19 North, Range 4 East, of the Second Principal Meridian, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

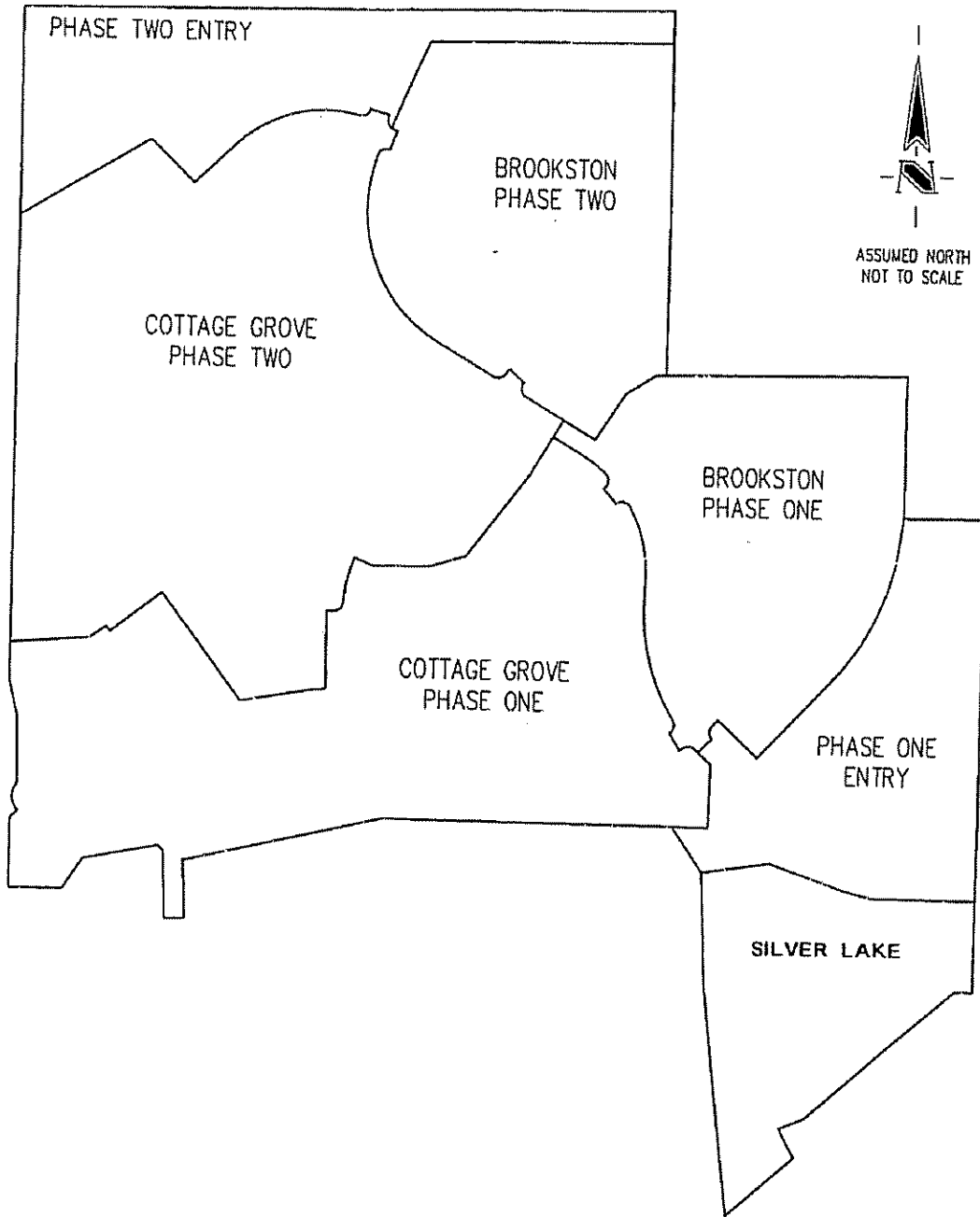
BEGINNING at the Northwest Corner of said Southeast Quarter Section; thence North 88 degrees 58 minutes 27 seconds East (Assumed Bearing) along the North Line of said Southeast Quarter Section a distance of 1744.60 feet to the easterly line of Phillip N. Johnson's Parcel of Land; thence South 00 degrees 03 minutes 47 seconds East along the easterly line of said Johnson Parcel a distance of 993.75 feet to the extension of the northerly line of said O'Toole Parcel of Land; thence North 88 degrees 58 minutes 27 seconds East along the extension of the northerly line of said O'Toole Parcel a distance of 688.70 feet to the northwesterly corner of said O'Toole Parcel; thence South 00 degrees 01 minutes 14 seconds West along the westerly line of said O'Toole Parcel a distance of 388.93 feet to the southwesterly corner of said O'Toole Parcel; thence North 88 degrees 58 minutes 27 seconds East along the southerly line of said O'Toole Parcel a distance of 224.00 feet to the East Line of said Southeast Quarter Section; thence South 00 degrees 01 minutes 14 seconds West along said East Line a distance of 1269.96 feet to the Southeast Corner of said Southeast Quarter Section; thence South 00 degrees 06 minutes 44 seconds West along the East Line of the aforesaid Northeast Quarter Section a distance of 22.24 feet to the northeasterly corner of Pebble Brook Section-Two, a Subdivision in Hamilton County, Indiana, the Secondary Plat of which is recorded as Instrument Number 8412011, Plat Book 11, Pages 62 through 65; (the following five courses being along the boundary of said Pebble Brook Section Two and the Replat thereof, which is recorded as Instrument Number 8724461, Plat Book 14, Pages 18, 19, and 20) (1) thence North 89 degrees 53 minutes 16 seconds West a distance of 50.00 feet; (2) thence South 49 degrees 01 minutes 31 seconds West a distance of 258.74 feet; (3) thence South 47 degrees 13 minutes 44 seconds West a distance of 45.10 feet to a curve having a radius of 534.42 feet, the radius point of which bears North 71 degrees 14 minutes 14 seconds West; (4) thence southwesterly along said curve an arc distance of 267.25 feet to a point which bears South 42 degrees 35 minutes 08 seconds East from said radius point; (5) thence South 47 degrees 24 minutes 53 seconds West a distance of 324.50 feet; thence North 07 degrees 48 minutes 52 seconds West a distance of 657.80 feet; thence North 00 degrees 16 minutes 27 seconds West a distance of 225.36 feet; thence North 26 degrees 11 minutes 38 seconds West a distance of 174.11 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 868.95 feet; thence South 79 degrees 08 minutes 02 seconds West a distance of 511.22 feet; thence North 44 degrees 31 minutes 49 seconds West a distance of 61.30 feet; thence South 78 degrees 28 minutes 30 seconds West a distance of 205.18 feet; thence South 33 degrees 08 minutes 53 seconds West a distance of 384.50 feet to the West Line of said Northeast Quarter Section; thence North 00 degrees 03 minutes 47 seconds West along said West Line a distance of 2650.97 feet to the POINT OF BEGINNING. Containing 129.239 acres, more or less.



DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT B  
GRAPHIC OF THE TRACT

EXHIBIT B  
THE TRACT



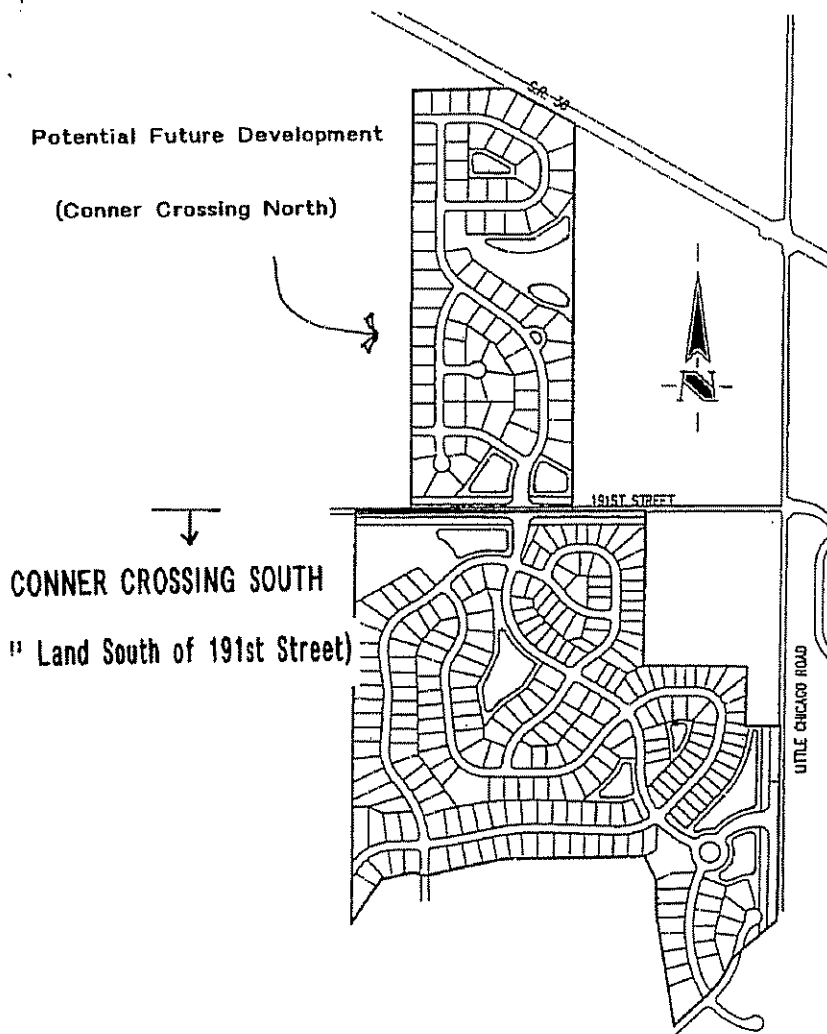
DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT C

GENERAL DEVELOPMENT PLAN  
FOR ALL OF CONNER CROSSING (CONNOR CROSSING SOUTH)

EXHIBIT C

GENERAL DEVELOPMENT PLAN



**SITE MAP**  
SCALE: 1" = 400'