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M. ROMER

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

VINEYARDS OF FALL CREEK

43 FILED

OCT 21 1996

THIS DECLARATION, made this 30 day of September 1996,
by KBS Development, Limited Liability Company, an Indiana Corporation (hereinafter referred to as the "Declarant"),

J. Romer

WITNESSETH:

WHEREAS, the Declarant is the owner of all the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, except for those lands described in Exhibits B and C attached hereto, all of which lands as described in the attached Exhibits A, B, and C will be subdivided and known as Vineyards (od) Fall Creek (hereinafter referred to as the "Development"), and will be more particularly described on the plat thereof which will be recorded in the office of the Recorder of Marion County; and

WHEREAS, the Declarant is about to sell and convey the residential lots situated within the platted areas of the Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the lots and lands in the Development and the future owners thereof; and

WHEREAS, JSH Enterprises, LLC, owns those lands described in the attached Exhibits B and C, and the said JSH Enterprises, LLC, desires to have its lands included within the Development to be platted and known as Vineyards of Fall Creek, and to have all of such lands be subject to all of the covenants, restrictions and easements hereinafter described;

NOW, THEREFORE, the undersigned Declarant, and the undersigned JSH Enterprises, LLC hereby declare that all of the platted lots and lands located within the Development as they become platted are held, and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein.

All of the Restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having an interest in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any real estate in the Development.

1. DEFINITIONS. The following are the definitions of the terms as they are used in this Declaration:

- A. "Committee" shall mean the Vineyards of Fall Creek Architectural Review Committee, comprised of three (3) persons who, initially, shall be the Declarant, the Secretary of the Association, and any builder actively engaged in the construction of homes within the Development. Any vacancies in the Committee shall be filled by appointment of the Declarant or, after termination of the Declarant's Class B membership, by appointment of the Association's Board of Directors, from among the Directors of the Association. The Declarant may, at any time, in writing, relinquish to the Association the power to fill vacancies occurring in the membership of the Committee.
- B. "Association" shall mean the Vineyards of Fall Creek Property Owners' Association, Inc., a nonprofit corporation, the membership and powers of which are more fully described in paragraph 9 of this Declaration.
- C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Marion County, Indiana.
- D. "Owner" shall mean any person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.
- E. "Plat" shall mean the subdivision plat of the property, as the same may be hereinafter amended or supplemented pursuant to the Declaration.

2. CHARACTER OF THE DEVELOPMENT

- A. In General. Every numbered lot platted as a part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be

permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plat shall be used in a manner consistent with the zoning and use designated in the plan filed by the Declarant with the Department of Metropolitan Development in the City of Indianapolis. However, the Declarant reserves unto itself the right to change the character of such designated use, at any time in the future, by applying to the Metropolitan Development Department and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Declarant's planned use.

- 7.
- B. No Storage Sheds. Notwithstanding anything contained herein or in the Association's Articles or By-Laws to the contrary, and in addition to all restrictions set forth in the plat of the Development, any and all forms of shed, storage shed, large animal quarters, etc., which are intended to not be directly connected to the main house on any Lot are hereby strictly prohibited unless, on a case-by-case basis, the Owners shall approve of such additional Building by a seventy-five percent (75%) majority of all Owners at a meeting of the Owners called for the purpose of approving such Building or at an annual meeting of the Owners.
- C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it has been substantially completed and a Certificate of Occupancy has been issued therefor.
- D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, and to all recorded easements and rights-of-way, and also to all governmental zoning authorities and regulations affecting the Development, all of which are incorporated herein by reference.
3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.
- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of

porches, terraces, garages, carports or similar facilities not modeled and decorated for regular and continuous habitation, shall in no case contain less than 1,500 square feet for one-story dwellings or 2,000 square feet for multilevel dwellings. Basements shall not be included in the computation of the minimum living area.

B. Residential Set-Back Requirements.

- (i) Front Set-Backs. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines as established on the plat of the Development.
- (ii) Side Yards. The side yard set-back lines shall not be less nineteen (19) feet in the aggregate nor less than seven (7) feet from the side line of the lot unless approved by the Marion County Board of Zoning Appeals, or unless there is a change in the Marion County development standards.
- (iii) Rear Yards. The rear set-back line shall be at least twenty five (25) feet from the rear lot line, unless approved by the Marion County Board of Zoning Appeals.

C. Fences, Mailboxes and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, no private owner-installed fences will be permitted. A uniform mailbox and post design will be selected by the Committee for all lots within the Development. All mailboxes will be installed by the builder of each single family home on each individual lot. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed.

D. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick, stone, wood or laminate siding or any other similar material or combinations thereof, but excluding aluminum, vinyl or T-111 siding. All driveways must be paved with asphalt or concrete.

E. Sidewalks. The Declarant will be responsible for the construction of all public walks along the street frontage only. Home builders will be responsible for any private sidewalks for each house.

- F. Garages Required. All residential dwellings in the Development shall include at least a two-car enclosed garage. Detached garages are not permitted.
- G. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
- H. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such lot.
- I. Maintenance of Lots and Improvements. The Owner of any lot in the Development shall, at all times, maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:
- (i) mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
 - (ii) Remove all debris and rubbish.
 - (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
 - (iv) Maintain and care for all builder installed trees and shrubs and cut down and remove any dead or hazardous trees or tree bunches.
 - (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
 - (vi) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.
- J. Association's Right to Perform Certain Maintenance. In the event that the Owner or occupant of any lot in the Development upon which there is located a completed house shall fail to maintain his lot and any improvements situated thereon in accordance with the

provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual assessment to which said lot is subject and may be collected in any manner in which such annual assessment may be collected. The provisions of this subparagraph shall be applied so as not to unduly burden the construction phases of any builder actively engaged in the construction of a home upon any lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. GENERAL PROHIBITIONS

- A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.
- B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs, except with the approval of the Declarant
- C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Parking. No trucks one (1) ton or larger in size, campers, trailers, boats or similar vehicles shall be parked on any street in the Development. No motorhome or recreational vehicle, trailer, camper or boat which is not used for normal transportation shall be permitted to remain on any lot except within a closed garage and shall not be regularly parked upon unpaved areas.
- E. Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his lot except as may be permitted in subparagraph F below. All houses built in

the Development shall be equipped with a garbage disposal unit.

- F. Trash Receptacles. Every receptacle for ashes, trash, rubbish or garbage shall be stored within the house except at the times when refuse collections are being made.
- G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home without permission to do so from the Declarant.
- H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot, except when being used by a builder.
- I. Open Drainage Ditches and Swales.
- (i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled or otherwise Changed, without the written permission of the city or county engineer. Property owners must maintain these swales as sodded grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate-sized culverts or other approved structures have been permitted by the city or county engineer.
- Culverts must be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.
- (ii) Any property Owner altering, changing or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the city or county will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment.
- J. Utility Services. Easements for installation and

maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility services shall be installed; constructed, repaired, removed or replaced under finished streets, except by jacking, drilling or boring.

- K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots (other than for heating or cooling purposes) nor shall any septic tanks be installed on any of the lots in the Development.
- L. Obtrusive Objects. No high intensity lighting, no television, radio or other antennae, no satellite dishes, nor any visually obtrusive object may be erected by any lot Owner on the exterior of a dwelling or anywhere on a lot unless approved by the Committee. It is the intent not to allow any exterior antennae, and satellite reception dish greater than 24 inches in diameter.
- M. Motor Vehicles. The repair or storage of inoperative motor vehicles shall not be permitted on a lot unless entirely within a garage constructed in accordance with these covenants and restrictions.
- N. Above Ground Pools. No above ground pools shall be allowed in the subdivision, except that small kiddie pools, hot tubs or spas closely attached to the house shall be permitted.
- O. Obstructions. No hedge, tree, shrub planting or other obstruction shall be placed in a triangular space at the street corner of a corner lot which would obstruct vision between the heights of three (3) and twelve (12) feet above established street grade; determined by a diagonal line connecting two points measured 25 feet equidistance from the street corner along each property line.

5. EASEMENTS.

- A. Lots are subject to drainage easements, sewer easements, utility easements, and landscape maintenance easements, either separately or in combination of the four, as shown on the plat of the Development which are reserved for the use of the lot owners, public utility companies and governmental agencies as follows:
- (1) Drainage easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the

Development. Under no circumstances shall said easements be blocked, in any manner, by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner. 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 or by the Declarant.

- (ii) Storm sewer easements (S.E.) and sanitary sewer easements (S.S.E.) are created for the use of the local governmental agency having jurisdiction over the storm and/or sanitary waste disposal system of said city and/or county designated to serve the Development for the purposes of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect with public sanitary sewer.
- (iii) Utility easements (U.E.) are created for the use of public utility and cable television companies, not including transportation companies, for the installation of pipes, mains, ducts and cables, as well as for the uses specified in the case of sewer easements.
- (iv) Landscape maintenance easements (L.M.E.) are created for the use of the Association, subject to the rights of the Owners as set forth in this Declaration, and the Association shall be responsible for the management, control and maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- (v) The Owners of all lots in the Development shall take title subject to the rights of public utilities, governmental agencies and the rights of the other lot owners in the Development to said easements herein granted for ingress and egress in, along and through the strips of ground for the purposes herein stated.

6. Lake Common Area Variable D.E.

- A. There is identified on the plat hereof an area to be owned by the Association and designated as Lake Common Area, which comprises a retention pond designed to accommodate storm water drainage runoff from the Development. The area identified as Lake Common Area shall be conveyed by the Declarant to the Association.

B. Certain Obligations and Access Rights to the Lake Common Area.

- (i) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Lake Common Area and for the maintenance of the same in a safe, neat and orderly condition at all times.
- (ii) The Association shall have and is hereby granted a general right of access and easement to all of the Lake Common Area across the lots, at reasonable times and at any time in the case of an emergency, as reasonably required by its officers, directors, employees, and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the development and for so long as Declarant may be responsible for any warranty work.
- (iii) An easement is hereby dedicated and granted for the use, in the case of an emergency, of emergency vehicles, including, but not limited to, fire trucks, police cars and ambulances and of emergency personnel, public and private, over and upon the Lake Common Area owned by the Association.

C. Use of Lake Common Area.

- (i) Except as otherwise provided herein, the enjoyment of the Lake Common Area shall be limited to the owners of the lots adjoining the Lake Common Area as shown on the plat.
- (ii) Subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns, as set forth in the Declaration, no individual has the right to cross another lot for access to the Lake Common Area.
- (iii) No one shall commit or permit any action or activity which could result in pollution of the lake, diversion of water, elevation of lake level, earth disturbance resulting in silting or any

other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. The lake may not be used for swimming, fishing, boating or for any other purpose, except for drainage of the Development, unless allowed by law and expressly and specifically approved by the Association and so stated, in writing, by the Board of Directors.

7. LANDSCAPE MAINTENANCE EASEMENTS (L.M.E) AND LAKE COMMON AREA.

- A. The Association, as part of its duties and as part of the Association's expenses, shall provide for:
- (i) Maintenance of the L.M.E.'s and Lake Common Area including but not limited to, fertilizing, mowing and replanting, when necessary, of the grass and trees, and annual maintenance of any other improvements within these areas.
 - (ii) Maintenance of the entry signs and walls located within the L.M.E.'s and the perimeter landscaping installed by the Declarant.
- B. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the L.M.E.'s and Lake Common Area as it deems necessary.

8. ARCHITECTURAL REVIEW COMMITTEE.

- A. Statement Of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

- (i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed, from time to time, by the Committee, and shall be accompanied by two (2) complete sets

of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1', and all plot plans shall be drawn to a scale of 1" = 30' or to such other scale as the Committee shall require.

(ii) Power Of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

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

(b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part hereof, would, in the sole opinion and absolute discretion of the Committee, be contrary to the interests, welfare or rights of all or any part of other owners.

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

B. Duties of Committee. The Committee shall, by a majority of those present and voting, approve or disapprove proposed improvements within thirty (30) days after all required information shall have been

submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

- C. Liability Of Committee. Neither the Committee nor any agent thereof, nor the Declarant, shall be liable in any way for the approval or disapproval of any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make 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.
- D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
- E. Continuation of Committee. When the Declarant notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. VINEYARDS OF FALL CREEK PROPERTY OWNERS' ASSOCIATION, INC.

A. In General.

- (i) There has been or will be created, under the laws of the State of Indiana, a nonprofit corporation to be known as the "Vineyards of Fall Creek Property Owners' Association, Inc."; which is herein referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual assessment.

B. Classes Of Membership. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. 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.

Class B. The Class B member(s) shall be the Declarant or any assignee of the Declarant, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) On the date of the sale of the last Lot within the Development to a non-builder homeowner.

(b) On January 1, 2001.

C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party, with or without cause, and without any termination fee, by written notice of sixty (60) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain the landscaping in and along 86th Street and Mudcreek Road and the landscape maintenance easements (L.M.E.'s) shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.

(ii) The Association shall govern the use of and maintain the common areas as defined herein.

(iii) The Association may procure and maintain casualty insurance, liability insurance (including Directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(iv) The Association may contract for such services as management, snow removal, security control, maintenance, pest extermination and lawn mowing, trash removal and such other services as the Association deems necessary or advisable.

10. COVENANT FOR MAINTENANCE ASSESSMENT.

- A. Creation of Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Declarant, by acceptance of a deed therefore; whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. No charge or assessment shall ever be levied by the Association against the Declarant.
- B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Development and for the improvement and maintenance of improvements, operated or maintained by the Association that may, from time to time, be construed by the Declarants, and the landscape easements on the Development and other purposes as specifically provided herein.
- C. Special Assessments for Capital Improvement and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may, from time to time, incur, provided, however that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- D. Notice and Quorum for Any Action Authorized Under Section C. Written notice of any meeting called for the purpose of taking any action authorized under Section C shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting

called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

- E. Association's Start-Up Funding. At the closing of the sale of each Lot to a non-builder Owner the purchaser of such Lot shall pay to the Association the sum One Hundred Dollars (\$100.00), which amount shall be held and used by the Association for operating expenses during the initial period of operation of the Property and the Association, to enable the Association to have cash available to pay authorized expenses, or to acquire necessary equipment, supplies, or services deemed necessary or desirable by the Board. Such payment by the Owner shall not be deemed an advance payment of any installment of assessments.
- F. Contributions to the Association by the Declarant. Declarant shall have the duty to contribute to the Association sufficient funds to enable the Association to fulfill its duties after the Association shall have exhausted all start-up funding received pursuant to subparagraph E immediately above, as well as all regular assessments and special assessments theretofore collected by the Association. The Declarant's duty under this subparagraph shall cease upon that date specified in Paragraph 9, subparagraph B of these Covenants.
- G. Date of Commencement of Annual Assessments: Due Dates. The monthly installments of the annual assessment provided for herein shall commence for each Lot on the first day of the first month following the date of conveyance by deed to a non-builder owner other than the Declarant or on the date a non-builder purchaser signs a Land Contract to purchase a Lot. For any Lot purchased by a builder, the monthly installments of the annual assessment shall begin on the first day of the first month following the date that the lawn upon the Lot is seeded or soddied by the Builder.

No Lot owned by the Declarant shall be subject to any annual or special assessment.

The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30)

days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Annual Assessments; Maximum Increase. Until December 31, 1997, the initial annual assessment shall not exceed the annual rate of \$900.00, payable monthly at the rate of \$75.00 for each Lot.

- (i) The Board of Directors may fix the actual annual assessments at any amount not in excess of the maximums permitted hereunder.
- (ii) From and after December 31, 1997, the annual assessment may be continued at the same level as the annual assessments for the previous year, or increased by an amount not exceeding five percent (5%) of the previous year's assessment without a vote of the membership.
- (iii) From and after December 31, 1997, the maximum annual assessments may be increased in an amount greater than five percent (5%) only after a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting called for this purpose, but no such increase shall exceed ten percent (10%) of the maximum annual assessments permitted for the previous year.

- I. Effect of Non-Payment of Assessments; Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expenses or costs, including attorneys' fees, incurred

by the Association in collecting the same. Every interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this paragraph 10 of these Restrictions.

The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

J. Subordination Of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage, but shall have priority over all other liens or mortgages irrespective of the date of attachment of such other liens or mortgages except for the lien of real estate taxes and municipal assessments specifically attaching to a designated lot. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, that sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

K. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (1) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or

associate member remains unpaid. (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

11. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Declarant, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to force compliance with these Restrictions and Covenants, together with right to collect costs and reasonable attorneys' fees; but neither the Declarant nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party of (or an estoppel of that Party to assert) any right available to him upon the occurrence, reoccurrence or continuation of such violations of these Restrictions.

C. Enforcement by City of Indianapolis or Marion County. These Restrictions may be enforced by the City of Indianapolis or Marion County, Indiana, or its successors or assigns pursuant to whatever powers or procedures are statutorily available to it for such purposes.

12. EFFECT OF BECOMING AN OWNER. The owners of any lot subject to these Restrictions by acceptance of a deed conveying title hereto, or the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Declarant, the Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Declarant, the Committee and the Association and to

and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

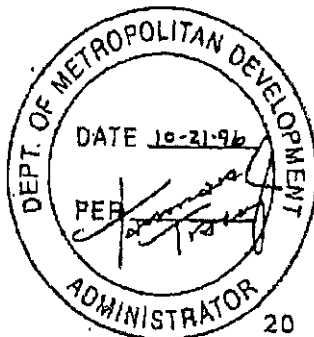
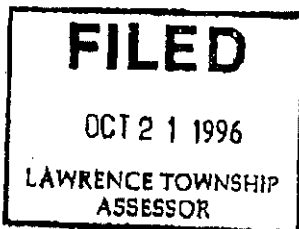
- 13. **TITLES.** The titles preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word 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.
- 14. **DURATION.** The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2017, 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 seventy-five percent (75%) of the numbered lots in the Development.
- 15. **SEVERABILITY.** Every one of the Restrictions is hereby declared to be independent of and 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 be without effect upon the validity, enforceability or running' quality of any other one of the Restrictions.

- 16. **AMENDMENT.** These Restrictions may be amended by a vote of seventy-five percent (75%) of the then lot owners of all lots in the Development.

IN TESTIMONY WHEREOF, witness the signature of KBS Development, LLC, the Declarant, and of JSH Enterprises, LLC, this 20 day of September, 1996.

KBS Development, Limited Liability Company



By: [Signature]
Kevin K. Kirkpatrick,
Member and Manager

JSH Enterprises, Limited
Liability Company

By: *James E. Hughes*
James E. Hughes
Member

And

By: *Susan P. Hughes*
Susan P. Hughes
Member

STATE OF INDIANA)
) SS.
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by Kevin K. Kirkpatrick who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and accurate to the best of his knowledge, information and belief.

WITNESS my Hand and Notarial seal this 25th day of September, 1996.

My Commission Expires:

6/18/00

County of Residence:

Marion

Kathleen A. Foley
Notary Public [Signature]

Kathleen A. Foley
Notary Public [Printed]

STATE OF INDIANA)
) SS.
 COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by James E. Hughes and Susan P. Hughes who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and accurate to the best of their knowledge, information and belief.

WITNESS my Hand and Notarial seal this 26th day of September, 1996.

My Commission Expires:

2/6/99

County of Residence:

MARION

Jerry L. Holmes
 Notary Public [Signature]

Jerry L. Holmes
 Notary Public [Printed]



This Instrument Prepared By: Sam Stoehr, HOWARD & STOEHR, 6100 North Keystone Avenue, Suite #448, Indianapolis, Indiana 46220; (317)251-2277, Attorney I.D. #528-49.

LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 17, Township 17 North, Range 5 East and a part of the Southeast Quarter of Section 18, Township 17 North, Range 5 East both of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

BEGINNING at the Southwest corner of the Southwest Quarter of said Section 17; thence North 90°00'00" East (assumed bearing) along the South line of said Southwest Quarter a distance of 1027.73 feet; thence North 00°00'00" East a distance of 809.31 feet (calc. rec.) (809.45 feet by deed); thence South 90°00'00" West parallel with the South line of said Southwest Quarter a distance of 1152.04 feet (measured) (1153.43 feet by deed) to the centerline of Mud Creek Road; thence South 11°30'40" East (measured) (South 14°51' East by deed) along said centerline a distance of 602.24 feet (measured) (612.65 feet by deed); thence South 01°04'46" East (measured) (South 04°45' East by deed) along said centerline a distance of 219.23 feet (measured) (219.1 feet by deed) to the Point of Beginning. Containing 19.975 Acres (870,103 Square Feet), more or less.

EXHIBIT A

A part of the Southwest Quarter of Section 17, Township 17 North, Range 5 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Southwest Quarter of said Section 17; thence North 90 degrees 00 minutes 00 seconds East (assumed bearing) along the South line of said Southwest Quarter a distance of 299.34 feet to the point of beginning; thence North 00 degrees 00 minutes 00 seconds East a distance of 198.69 feet to a point on a curve concave Northwesterly having a radius of 85.00 feet and a central angle of 15 degrees 16 minutes 18 minutes; thence Northeasterly along said curve an arc distance of 22.66 feet (said arc being subtended by a chord bearing North 62 degrees 41 minutes 10 seconds East a distance of 22.59 feet) to a point of reverse curvature of a curve concave Southeasterly having a radius of 62.00 feet and a central angle of 37 degrees 30 minutes 06 seconds; thence Northeasterly along said curve an arc distance of 40.50 feet (said arc being subtended by a chord bearing North 73 degrees 48 minutes 12 seconds East a distance of 39.86 feet) to a point of compound curvature of a curve concave Northerly having a radius of 175.00 feet and a central angle of 02 degrees 33 minutes 15 seconds; thence Easterly along said curve an arc distance of 7.80 feet (said arc being subtended by a chord bearing South 80 degrees 43 minutes 22 seconds East a distance of 7.80 feet); thence North 90 degrees 00 minutes 00 seconds East a distance of 13.85 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 220.00 feet to the South line of said Southwest Quarter; thence South 90 degrees 00 minutes 00 seconds West along the South line of said Southwest Quarter a distance of 80.00 feet to the point of beginning. (Proposed Lot 38 in The Vineyards of Fall Creek)

RECEIVED FOR RECORD

96 OCT 21 PM 2:41

JOHN H. ROEMER
MARION COUNTY RECORDER

EXHIBIT C

Mr. Eric Pavlack
Cohen & Malad
136 N. Delaware
Suite 300
P.O. Box 627
Indianapolis Indiana 46206-0627

Mr. Eric Pavlack
Cohen & Malad
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Suite 300
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136 N. Delaware
Suite 300
P.O. Box 627
Indianapolis Indiana 46206-0627

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DATA
ML

FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR VINEYARDS OF FALL CREEK

This First Amendment, is made as of this 10th day of January, 2006 to the Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek originally filed of record in Marion County Recorder's Office on October 21, 1996 as Instrument No. 960147013 (hereinafter "The Restrictions") by having received an affirmative vote of seventy-five percent (75%) of the lot owners of the Vineyards of Fall Creek as provided in the Restrictions, which amendments are as follows:

1. Paragraph 6 C (iii) in the Restrictions shall be amended to read as follows:

No one shall commit or permit any action or activity which could result in pollution of the lake, diversion of water, elevation of lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. Unless allowed by the Board of Directors, the lake may not be used for swimming, fishing, boating or for any other purpose, except for drainage of the Development.

2. Paragraph 9 is hereby amended so as to add subparagraph F which shall read as follows:

Responsibilities of the Owners. The owners shall each be responsible for paying the annual assessment as such assessment is provided for in these Restrictions regardless of whether an owner chooses to mow his or her lawn, except as may be determined otherwise by the Board of Directors.

The Vineyards of Fall Creek Property Owners' Association, Inc.

By: Frances C. Muench
President
FRANCES C. MUENCH
By: Larry R. Dietrich
Secretary
LARRY R. DIETRICH

FILED
JAN 17 2006
LAWRENCE TOWNSHIP ASSESSOR

DEPT. OF METROPOLITAN DEVELOPMENT
DATE 1-19-06
PER LA
ADMINISTRATOR

MARION COUNTY AUDITOR
MARTHA A. WOMACKS
615447 JAN 19 08
DAILY CHECKED FOR TAXATION
SUBJECT TO FINAL ASSESSANCE
FOR TRANSFER

01/19/06 02:34PM MARION COUNTY RECORDER
Inst # 2006-0006659
MLH 17:00 PAGES: 3

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by Frances C. Wrench and Larry P. Dietrich who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and correct to the best of their knowledge, information and belief.

WITNESS my Hand and Notarial seal this 10th day of January 2006.

My Commission Expires:

10/29/2009

County of Residence:

Marion

Robert M. Koeller
Notary Public [Signature]

Robert M. Koeller
Notary Public [Printed]

This instrument prepare by: Robert M. Koeller, ITTENBACH JOHNSON TRETTIN & KOELLER. 6350 N. Shadeland Ave., Suite 4, Indianapolis, Indiana 46220.

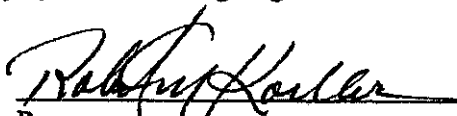
DECLARATION

I, the undersigned preparer of the attached deed, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.

Dated: 1-10-06


Preparer
ROBERT M KOELLER

089534

2014 DEC 22 3:01 PM

01/22/2014 3:01 PM
JULIE L. VORHIES
MARION COUNTY XN RECORDER
FEE: \$ 17.50
PAGES: 2
By: SC

NOTED FOR THE PUBLIC
SHERIFF'S OFFICE
1/21/2015

**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS FOR
VINEYARDS OF FALL CREEK**

This Second Amendment, is made as of this 17 day of December, 2013, to the Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek originally filed of record in Marion County Recorder's Office on October 21, 1996 as Instrument No. 960147013 (hereinafter "The Restrictions") by having received an affirmative vote of seventy-five percent (75%) of the lot owners of the Vineyards of Fall Creek as provided in the Restrictions, which amendments are as follows:

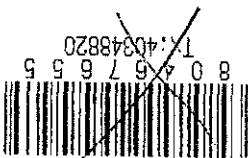
Paragraph 4 in the Restrictions shall be amended to add subparagraph P to read as follows:

For the purpose of maintaining the congenial and residential character of Vineyards of Fall Creek and for the protection of the Owners with regard to financially responsible residents, leasing or rental of a dwelling by an Owner shall not be allowed, except as allowed by the Board of Directors in the case of hardship as determined by the Board of Directors. Each dwelling should be occupied by an Owner and their immediate family.

The Vineyards of Fall Creek Property Owners' Association, Inc.

By: Bruce B. Melchert Bruce B. Melchert
President

By: Janice L. Faherty Janice L. Faherty
Secretary



SC

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by Bruce B. Melchert, President and Janice L. Taherty, Secretary who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and correct to the best of their knowledge, information and belief.

WITNESS my Hand and Notarial seal this 20th day of December, 2013.

My Commission Expires: 9-29-2017

Robert M Koeller

Notary Public [Signature]

County of Residence: Marion

Robert M Koeller

Notary Public [Printed]

This instrument prepared by: Robert M. Koeller, ITTENBACH JOHNSON KOELLER & ABRAMS, P.A., 6350 N. Shadeland Ave., Suite 4, Indianapolis, Indiana 46220.

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

T. J. Agel
T. J. Agel

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CODE OF BYLAWS

of

Vineyards of Fall Creek Property Owners' Association, Inc.,

An Indiana Nonprofit Corporation

**CODE OF BYLAWS
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CODE OF BYLAWS OF

Vineyards of Fall Creek Property Owners' Association, Inc.

An Indiana Nonprofit Corporation

ARTICLE I

NAME

Section 1.1. Name. The name of this Corporation is Vineyards of Fall Creek Property Owners' Association, Inc. (hereinafter referred to as "Corporation"), a mutual benefit corporation.

ARTICLE II

IDENTIFICATION & APPLICABILITY

Section 2.1. Identification and Adoption. The provisions of these Bylaws shall apply to the Property and the administration and conduct of the affairs of the Corporation. These Bylaws shall also constitute the Bylaws of the Corporation.

Section 2.2. Individual Application. Each of the Owners within The Vineyards of Fall Creek shall automatically and mandatorily be Members of the Corporation and be entitled to all of the privileges and subject to all of the obligations thereof. All owners, by their acceptance of their respective deeds to their Lots, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the Declaration of Covenants, Conditions, Restrictions and Easements for Vineyards of Fall Creek, said Declaration having been recorded in the Marion County Recorder's Office on the 21st day of October, 1996, as Instrument No. 96-0147013, the Articles of Incorporation, the rules and regulations of the Corporation, the provisions hereof, and to any amendments to such documents. All of the Owners, future owners, tenants, future tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a residence upon any Lot or any part of the Property shall be subject to the rules, restrictions, terms, and conditions set forth in the Declaration, the Articles of Incorporation, these Bylaws, and the Indiana Nonprofit Corporation Act of 1991 (the "Act"), all as the same may be amended from time to time, and to any rules and regulations adopted by the Board of Directors as herein provided. The Declaration is incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Declaration shall apply to and govern the interpretation of the Articles of Incorporation and this Code of Bylaws. The definitions and terms, as defined and used in the Declaration, shall have the same meaning in the Articles of Incorporation and in this Code of Bylaws.

ARTICLE III

MEETINGS OF CORPORATION

Section 3.1. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, a meeting of the Members shall be held for the purpose of electing the Board of Directors, receiving and approving the annual budget, providing for the collection and payment of Common Expenses, and for such other purposes as may be required by the Declaration, these Bylaws, the Articles, or the Act.

Section 3.2. Annual Meeting. The annual meeting for the Members of the Corporation shall be held on the second Tuesday of December in each calendar year. At [REDACTED] annual meeting, the Members shall elect the Board of Directors of the Corporation in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

Section 3.3. Special Meetings. A special meeting of the Members of the Corporation may be called by the President, by resolution of the Board of Directors or upon a written petition of the designated Owners of not less than twenty percent (20%) of the Lots. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 3.4. Notice and Place of Meetings. All meetings of the Members of the Corporation shall be held within the Property or at any suitable place in Marion County, Indiana, as may be designated by the Board of Directors. Written notice stating the time, place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the secretary of the Corporation to each Member entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Members as part of a newsletter or other publication regularly sent to the Members constitutes a written notice. If at any meeting an amendment to the Declaration, the Articles of Incorporation, or these Bylaws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Members at their respective addresses as the same shall appear upon the records of the Corporation. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Corporation to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Corporation with its name and address in accordance with section 8.1 of these Bylaws.

Such Mortgagee may designate in writing a representative to attend the meeting.

Section 3.5. Voting.

(a) Number of Votes. Each Class A Member is entitled to cast one (1) vote upon each matter coming before the meeting. The Class B Member is entitled to cast three (3) votes for each Lot in the Property owned by it upon each matter coming before the meeting. To the extent provided in the Act, plurality voting shall be permitted such that at any meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the proposed action exceed the votes opposing the action.

(b) Multiple Owners. When more than one (1) person or entity constitutes the owner of a particular Lot, all such persons or entities shall be Members of the Corporation, but all of such persons or entities shall have only one (1) vote. This one (1) vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(c) Voting by Corporation or Trust. Where a corporation or trust is an owner or is otherwise entitled to vote, the trustees may cast the votes on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the votes to which the corporation is entitled. The secretary of such corporation or a trustee of such trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said corporation or trust.

(d) Proxy. A Member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the corporation prior to the commencement of the meeting. No such proxy shall remain valid for longer than one (1) year from the date of its execution, unless a longer term is specified in the proxy. Notwithstanding anything else herein to the contrary, no Member or any other person or entity shall be entitled to cast the votes of more than three (3) proxies on any matter voted upon by the Members.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these Bylaws, or the Articles, or the Act, the presence of Members or their duly authorized representatives owning at least thirty percent (30%) of the total Lots within the Property shall constitute a quorum at

all meetings. Unless otherwise required herein or by the Act, the Members at a meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. As used elsewhere in these Bylaws, the term "Majority of Owners" shall mean the Owners of least twenty ^{7.8} (20) of the thirty-nine (39) Lots within the Property, and the term "Majority of the Vote" shall mean a majority of the votes cast by Members present or represented by proxy at such meeting at which a quorum is present.

Section 3.6. Conduct of Annual Meeting. The Chairman of the annual meeting shall be the President of the Corporation. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

(1) Minutes. The minutes of the last annual meeting and the minutes of any regular or special meeting of the Members held subsequent thereto shall have been mailed to all Owners prior to the annual meeting and shall not be read at the annual meeting.

(2) Treasurer's Report. The Treasurer shall report to the Co-Owners concerning the financial condition of the Corporation and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current fiscal year.

(3) Budget. The proposed budget for the current fiscal calendar year shall be presented to the Owners for approval or amendment.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by a Member from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Corporation at least ten (10) days prior to the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Member may cast the total number of votes to which he or she is entitled for as many nominees as are to be elected; however, no Member shall be entitled to accumulate his or her votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least ten (10) days prior to the date of the meeting; provided, however, that such

written request may be waived at the meeting if agreed to by a Majority of the Vote as defined in Section 3.5(e) hereof.

(6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations prescribed in the Declaration or assigned by the Board of Directors shall be presented.

(7) Adjournment. Upon completion of all business before the Corporation, the President, upon the motion of any Member, seconded, and voted upon by the Members, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Members for the upcoming year.

Section 3.7. Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation if he or she is present. The chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

Section 3.8. Written Ballots. In lieu of any annual or special meeting of the Members, written ballots may be utilized in the manner prescribed in the Act.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1. Board of Directors. The affairs of the Corporation shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The initial Board of Directors shall be appointed by the Incorporator of the Corporation, and shall be composed of three (3) persons who are either officers or members of the Class B Member entity, or who are Class A Members owning at least one Lot. The number of Directors may be increased or decreased from time to time, upon resolution having the assent of a Majority of the ~~Votes of the~~ Members, but in no event shall the number of Directors exceed seven (7) nor be decreased to less than three (3). No reduction in the number of Directors shall have the effect of removing a Director from office prior to the expiration of his or her term.

Section 4.2. Additional Qualifications. Except for the initial Board of Directors, each Director shall be a Member as defined in the Declaration. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple owner, or a partner or an officer or trustee shall be eligible to serve on

the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

Section 4.3. Term of Office and Vacancy. Members of the initial Board of Directors who have been appointed by the Incorporator shall serve for a term of two years from the date of appointment. Thereafter, Directors shall be elected at the annual meeting of the Corporation. Each Director so elected shall serve a term of two (2) years. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Members to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Each Director shall hold office throughout the term of his or her election until his or her successor is elected and qualified.

Section 4.4. Removal of Directors. A Director or Directors elected by the Members or elected by the Directors to fill a vacancy, may be removed by the Members with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors elected by the Members may be removed by the Members only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected at the same meeting from eligible owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s). A director shall be removed from his/her office upon missing three (3) consecutive Board meetings without prior notification to the President or the Vice President of his/her absence. The Board shall then appoint a new Director from the Members comprising the Vineyards of Fall Creek Property Owners' Association, Inc.

Section 4.5. Duties of the Board of Directors. The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment, the following:

(a) Protection, repair and replacement of the Common Areas and Landscape Easements, unless the same are otherwise the responsibility or duty of the owners; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(b) Procuring of utilities, removal of garbage and waste if not provided by the municipality;

(c) Landscaping, mowing and cleaning of the Common Areas and Landscape Easements;

(d) Assessment and collection from the Owners of the Owners' pro-rata share of the Common Expenses;

(e) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Member at the same time the notice of annual meeting is mailed or delivered;

(g) Preparing and delivering annually to the Members a full accounting of all receipts and expenses incurred during each year, which accounting shall be delivered to each Member simultaneously with delivery of the notice of the annual meeting of the Members;

(h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by a Member at any time during normal business hours;

(i) Procuring and maintaining in force all insurance coverage required by the Declaration;

(j) Performing such other duties as may be reasonably inferred from the provisions of the Declaration.

Section 4.6. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:

(a) To employ a reputable and recognized professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties; provided, however, any management agreement shall be terminable for cause upon thirty (30) days written notice and terminable without cause upon sixty (60) days written notice, and any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods;

(b) To purchase for the benefit of the Members such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

(c) To procure for the benefit of the Corporation public liability and property damage insurance and Workers

Compensation insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration;

(d) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(e) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and Landscape Easements;

(f) To include the costs of all of the above and foregoing as Common Expenses of the Corporation and to pay all of such costs therefrom;

(g) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto;

(h) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Lots and Common Areas within the Property, provided that the Board shall give advance written notice to the Members of such rules and any revision, amendment, or alteration thereof.

Section 4.7. Limitations on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a Majority of Members [as defined in Section 3.5(e) hereof] is obtained, except in the following cases:

(a) Supervision and management of the replacement or restoration of any portion of the Common Areas or Landscape Easements damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received;

(b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Members at the annual meeting; and

(c) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Members.

The said Five Thousand Dollar (\$5,000.00) maximum shall automatically be adjusted every five (5) years from the date of

first adoption of these Bylaws to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.

Section 4.8. Compensation. No Director or Officer shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a Majority of Owners as defined in Section 3.5(e) hereof.

Section 4.9. Meetings and Notice. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. No written or verbal notice need be given to Directors for regularly scheduled Board meetings of which the Directors are already aware. For all other board meetings, the Secretary shall give notice of such meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meetings. Special meetings of the Board may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice. To the extent provided in the Act, a Director may conduct or participate in a regular or special meeting of the Board of Directors through the use of conference telephone or any means of communication by which all directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

Section 4.10. Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 4.11. Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 4.12. Bond. The Board of Directors may require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery,

misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 4.13. Informal Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board and such written consent is filed with the minutes of proceedings of the Board or committee.

Section 4.14. Standards of Conduct and Liability of Directors and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Corporation shall be as set forth in the Act, as the same may be amended from time to time.

ARTICLE V

OFFICERS

Section 5.1. Officers of the Corporation. The principal officers of the Corporation shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 5.2. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the first meeting of the Board following each election thereof. Each officer shall hold office for one (1) year or until his successor shall have been duly elected and qualified, unless earlier removed by the Board of Directors. Upon recommendation of a majority of all members of the Board, any officer may be removed either with or without cause and his or her successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he or she may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time

prescribe.

Section 5.4. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him or her by the Board or by the President.

Section 5.5. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall authenticate the Corporation's records, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these Bylaws.

Section 5.6. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and such other duties incident to the office of Treasurer. The Treasurer shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Corporation. He or she, acting individually, or acting by and through any duly employed managing agent, shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Corporation.

Section 5.7. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board of Directors may prescribe.

ARTICLE VI

ADDITIONAL RIGHTS AND DUTIES OF BOARD

Section 6.1. Right of Entry. An Owner or occupant of a Lot shall be deemed to have granted the right of entry to his Lot and to his residence to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening his or her residence or any other property or person, whether the Owner is present at the time or not.

Section 6.2. Right of Board to Adopt Rules. The Board may promulgate reasonable rules regulating activities and conduct within the Property as the Board may deem desirable, including but not limited to permitted and prohibited uses of the Common Areas and Landscape Easements. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules, including any amendments or repeals thereof, to be delivered or mailed promptly to all Members at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

ARTICLE VII

INDEMNIFICATION

Section 7.1. Indemnification of Directors. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director of the corporation shall be indemnified by the corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended.

Section 7.2. Indemnification of Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended. In addition, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation to the same and fullest extent that directors are indemnified by the Corporation as provided for in the Indiana Nonprofit Corporation Act of 1991, as it now exists or is hereinafter amended.

ARTICLE VIII

NOTICES AND MORTGAGES

Section 8.1. Notice to Association. Any owner who places a first mortgage lien upon his Lot or the Mortgagee thereof may notify the Secretary of the Corporation and provide the name and address of such Mortgagee, which shall be maintained by the Secretary, and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration or these Bylaws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of the existence of any such mortgage and the name and address of the Mortgagee are furnished to the Secretary, either by owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these Bylaws shall be required, and no

Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or Bylaws or proxy granted to such Mortgagee in connection with the mortgage.

Section 8.2. Notice of Unpaid Assessments. Upon ten (10) days written notice to the Corporation and the payment of a reasonable fee, the Corporation shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company, purchaser or other prospective transferee of a Lot, a written statement setting forth the amount of all unpaid assessments, if any, with respect to the subject Lot, together with the amount of the current assessments for Common Expenses and the date(s) such assessments become due and payable. Any such written statement shall be binding upon the Corporation in favor of any person relying thereon in good faith, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to any lien for any unpaid assessments in excess of the amount set forth in such statement.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 9.2. Personal Interests. Except as permitted under Section 4.8 hereof, no Member of the Corporation shall have or receive any earnings from the Corporation; provided, however, that a Member who is an officer, director, employee, or agent of the Corporation may be reimbursed for expenses actually incurred on the Corporation's behalf.

Section 9.3. Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money in the conduct of the ordinary course of business of the corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, shall be signed by the Treasurer and one other person as designated by the Board of Directors.

ARTICLE X

AMENDMENT TO BYLAWS

Section 10.1. Amendment. These Bylaws may be amended by a Majority of the Owners as defined in Section 3.5(e) hereof in a duly constituted meeting called for such purpose, except as prohibited by any provision of the Declaration, the Act, or these Bylaws, as the same may be amended from time to time.

ARTICLE XI

ASSESSMENTS

Section 11.1. Annual Accounting. Annually, near the close of each calendar year and prior to the date of the annual meeting of the Corporation, the Board shall cause to be prepared and furnished to each Member a financial statement, which statement shall show all receipts and expenses received, incurred, and paid during the preceding calendar year.

Section 11.2. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments; and (2) Special Assessments; such assessments to be established and collected as hereinafter provided. The Regular and Special Assessments, together with commercially reasonable late fees, collection fees, costs, reasonable attorney's fees, and any other obligation which may be charged to an Owner pursuant to the Declaration or these Bylaws, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with commercially reasonable late fees, collection fees, costs, and reasonable attorney's fees, shall also be the personal obligation of the person or other entity which was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title, unless expressly assumed by them.

Section 11.3. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Member prior to the annual meeting. The proposed annual budget shall take into consideration all anticipated costs and expenses necessary for maintenance and repair of the Common Areas and Landscape Easements, together with necessary insurance, reserve fund for replacements, maintenance, and operation of the community activities of the Corporation, and for any other necessary function for such maintenance and operation of the Property.

Section 11.4. Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot. Such assessments shall be uniform for all of the Lots. Immediately following the adoption of the annual budget, each owner shall be given written notice of such assessment against each respective Lot (herein called the "Regular Assessment"). The Regular Assessment against

each Lot shall be paid in twelve (12) equal monthly installments, commencing on the first day of the month following adoption and on the first day of each calendar month thereafter. Payment of the monthly installment of the regular assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Members may elect to pay monthly assessments semi-annually in advance. The Regular Assessment for the year shall become a lien on each separate Lot as of the first day of the month after adoption.

Section 11.5. Special Assessments. In addition to the Regular Assessments authorized above, the Corporation may levy in any assessment year, Special Assessments for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies; provided that any such assessments shall have the assent of a Majority of the Vote (as defined in Section 3.5(e) hereof) of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Any Special Assessment shall be fixed at a uniform rate for all Lots.

The amount of the Regular Assessment or of any Special Assessment provided for in this Section, shall be assessed as a lien at the beginning of each Regular Assessment period or at the time of Special Assessment, as the case may be. Each installment of the assessment shall be due and payable not later than the tenth (10th) day of each month, and upon default of payment within such period of time, the Corporation shall be entitled to enforce the payment of said assessment according to the laws of the State of Indiana, and to take any other actions for collection from the defaulting parties as may be authorized by the Declaration, the Articles, or these ByLaws.

Section 11.6. Failure of Owner to Pay Assessment. No Owner may exempt himself or herself from paying Regular or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him or her. Each owner shall be personally liable for the payment of all Regular and Special Assessments. Where the owner constitutes more than one person, the liability of such persons shall be joint and several. If any owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessment when due, the lien for such Assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Corporation as provided by law or contract. Upon the failure of an Owner to make payments of any Regular Assessment or Special Assessment within ten (10) days after such are due, the Board may,

in its discretion, (1) impose a late fee of up to ten percent (10%) of the amount of each installment in default, (2) accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary, and (3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended. In any action to foreclose the lien for Assessments, the owner and any occupant shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and its improvements, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and its improvements and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Lot.

Section 11.7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Lot subject to assessment. Notwithstanding anything contained in this section or elsewhere in these Bylaws or the Declaration, any sale or transfer of a Lot to a first Mortgagee pursuant to a foreclosure on its mortgage or a conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

Section 11.8. Maintenance and Repairs. Every owner shall promptly perform all maintenance and repair upon his own Lot and the improvements thereon which, if neglected, would adversely affect the value of the other Lots within the Property, or which would constitute a hazard or a nuisance.

ARTICLE XII

RESTRICTIONS

Section 12.1. The following restrictions on the use and enjoyment of the Lots, the Common Areas, and the Landscape Easements are supplemental to or are in addition to those set forth in the Declaration. These restrictions are as follows:

(a) All Lots and the improvements situated thereon shall be used exclusively for residential purposes and occupancy for a single family.

(b) No additional buildings shall be erected other than a residence as contemplated in the Declaration.

(c) Nothing shall be done or kept upon any Lot or within any residence or in the Common Areas or Landscape Easements which would be in violation of any law or ordinance.

(d) No waste shall be committed upon or within the Common Areas or Landscape Easements.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of a residence, or on or upon any balcony or patio, and no sign, awning, canopy, shutter, or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other part of the residence without the prior written consent of the Board.

(f) No animals, livestock, or poultry of any kind shall be raised, bred, or kept upon any Lot or in the Common Areas, except that small pet dogs, cats, or customary household pets may be kept, provided that such pet is not kept, bred, or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash and an Owner shall be fully liable for any damage to the Common Areas or Landscape Easements caused by his or her pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon the occurrence of two (2) violations of this paragraph documented by written notices from the Board to the respective owner.

(g) Nothing shall be done or permitted upon any Lot which is likely to cause injury to the reputation of the Property or to be a nuisance, annoyance, inconvenience, or damage to other residents of the Property, including, without

limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers, or other equipment or machines.

(h) No clothes, sheets, blankets, rugs, laundry, or other things shall be hung out or exposed on any part of the Common Areas. The common Areas shall be kept free and clear of rubbish, debris, and other unsightly material by Owners.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced, or permitted in the Property other than home professional pursuits clearly incidental to the residential use of the residence without employees.

(j) No "For Sale", "For Rent", or "For Lease" signs or other window advertising display shall be maintained or permitted on any part of the Property or any residence without the prior consent of the Board; provided, however, that the right is reserved by the Declarant to place or allow to be placed "For Sale" or "For Lease" signs on any unsold Lots or unsold residences.

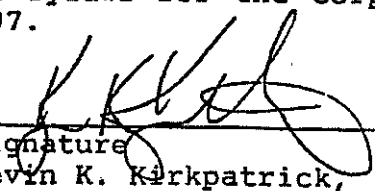
(k) All owners and members of their families, their guests, or invitees, and all occupants of any residence or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules as may from time to time be issued by the Board governing the operation, use, and enjoyment of the Property.

(l) No boats, campers, trailers of any kind, buses, mobile homes, commercial trucks, motorcycles, mini-bikes, or any other unconventional vehicles of any description shall be parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage.

✓ (m) No Owner shall be allowed to plant trees, landscape, or do any gardening in any of the Common Areas or Landscape Easements, except with the express written permission of the Board.

(n) All trash or refuse shall be stored in appropriate containers inside the residence (including garage) or designated trash areas except during regular trash collection days.

IN WITNESS WHEREOF, I, the undersigned incorporator, do hereby
adopt and execute this Code of Bylaws for the Corporation this
20th day of June, 1997.



Signature
Kevin K. Kirkpatrick,
Incorporator of Vineyards of Fall
Creek Property Owners' Association,
Inc., a mutual benefit corporation

**FIRST AMENDMENT TO THE CODE OF BYLAWS OF
VINEYARDS OF FALL CREEK PROPERTY OWNERS' ASSOCIATION, INC.**

Having received the affirmative vote of a majority of the lot owners of Vineyards of Fall Creek the following amendments are made to the bylaws of Vineyard of Fall Creek Property Owners' Association, Inc.:

1. Section 12.1(e) is amended to read as follows:

(e) Except as may be decided by the Board, no Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of a residence, or on or upon any balcony or patio, and no sign, awning, canopy, shutter, or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other part of the residence.

Secretary

**SECOND AMENDMENT TO THE CODE OF BYLAWS OF
VINEYARDS OF FALL CREEK PROPERTY OWNERS' ASSOCIATION, INC.**

Having received the affirmative vote of a majority of the lot owners of Vineyards of Fall Creek the following resolution is adopted relating to an amendment to the bylaws of Vineyard of Fall Creek Property Owners' Association, Inc.:

RESOLVED, that Section 4.3 is amended to read as follows:

Directors shall be elected in a manner so that there will be staggered terms. Initially, commencing for the year 2010, two directors shall be elected for one year terms and three directors shall be elected for two year terms. At each subsequent annual meeting of the Corporation, the directors shall be elected as their terms expire for two year terms. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Members to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Each Director shall hold office throughout the term of his or her election until his or her successor is elected and qualified.

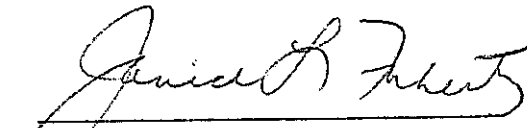
Secretary

THIRD AMENDMENT TO THE CODE OF BYLAWS OF
VINEYARDS OF FALL CREEK PROPERTY OWNERS' ASSOCIATION, INC.

Having received the affirmative vote of a majority of the lot owners of Vineyards of Fall Creek, the following resolution is adopted relating to an amendment to the bylaws of Vineyards of Fall Creek Property Owners' Association, Inc.:

RESOLVED, that Section 3.2 is amended to read as follows:

Section 3.2. Annual Meeting. The annual meeting for the Members of the Corporation shall be held on the second Tuesday of December in each calendar year unless the Board of Directors decides upon a more convenient date for the Annual Meeting. At such Annual Meeting, the Members shall elect the board of Directors of the Corporation in accordance with the provisions of these By-laws and transact such other business as may properly come before the meeting.


Secretary

10-28-13
Date

4

DECLARANT'S ASSIGNMENT FOR
VINEYARDS OF FALL CREEK

THIS INSTRUMENT WITNESSETH THAT:

WHEREAS, KBS Development, LLC, as developer of Vineyards of Fall Creek, a subdivision within Marion County, Indiana, recorded its Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek in the Office of the Recorder of Marion County, Indiana, as Instrument No. 96-0147013; and

WHEREAS, within the aforesaid Declaration of Covenants, Restrictions and Easements, KBS Development, LLC, was named, designated and defined as the "Declarant"; and

WHEREAS, within the aforesaid Declaration of Covenants, Restrictions and Easements, the Declarant is to be possessed of certain rights, powers and privileges with respect to the subdivision known as the Vineyards of Fall Creek and with respect to its ownership of any of the platted lots therein; and

WHEREAS, within the aforesaid Declaration of Covenants, Restrictions and Easements, the Declarant is to be subject to certain duties, responsibilities and obligations with respect to the subdivision known as the Vineyards of Fall Creek; and

WHEREAS, KBS Development, LLC, desires to assign to JSH Enterprises, LLC, all of the rights, powers and privileges, as well as all of the duties, responsibilities and obligations of the Declarant as provided for in the aforesaid Declaration of Covenants, Restrictions and Easements; and

WHEREAS, JSH Enterprises, LLC, desires to and agrees to accept such assignment from KBS Development, LLC;

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the undersigned KBS Development, LLC, and JSH Enterprises, LLC, mutually agree as follows:

A. Assignment of Interest. KBS Development, LLC, an Indiana limited liability company, heretofore the Declarant under the Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek, recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 96-0147013, hereby designates JSH Enterprises, LLC, an Indiana limited liability company, to be the Declarant under the aforesaid Declaration of

Covenants, Restrictions and Easements for Vineyards of Fall Creek, and KBS Development, LLC, hereby assigns and conveys to JSH Enterprises, LLC, all of the rights, powers and privileges, together with all of the duties, responsibilities and obligations appertaining to the said "Declarant" as defined within the aforesaid Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek.

B. Acceptance of Assignment. JSH Enterprises, LLC, hereby accepts the designation as Declarant and hereby accepts the assignment to it of all of the rights, powers and privileges, together with all of the duties, responsibilities and obligations appertaining to the said "Declarant" as defined within the aforesaid Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek.

C. Indemnification. JSH Enterprises, LLC, agrees to hold harmless and indemnify KBS Development, LLC, and its Members and officers, from and against any and all claims, damages, demands, liabilities, suits, litigation, judgments, attorneys' fees, costs or expenses which may ever hereafter be asserted by any person or entity against KBS Development, LLC, or its Members or officers arising from or out of the previous status of KBS Development, LLC, as Declarant under the aforesaid Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek, or arising from any act, omission, obligation, failure of obligation, liability or debt of KBS Development, LLC, appertaining to its previous status as Declarant under the aforesaid Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek. Nothing contained within this Section C shall be construed so as to require JSH Enterprises, LLC, to hold harmless or indemnify KBS Development, LLC, from or against any claims or liabilities asserted against KBS Development, LLC, arising out of any act or failure to act of KBS Development, LLC, which was or is separate, distinct and independent of its status as Declarant.

D. Relinquishment of Rights. From and after the date hereof, KBS Development, LLC, covenants with JSH Enterprises, LLC, that KBS Development, LLC, will not act as or attempt to act as Declarant, or exercise or attempt to exercise any right, power or privilege reserved to the Declarant as defined and designated in the aforesaid Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek, nor will KBS Development, LLC, interfere with or impede the exercise of all of any of such rights, powers or privileges by JSH Enterprises, LLC.

E. Recordation. If recording of this instrument in the Office of the Recorder of Marion County, Indiana is deemed to be required for its effect and validity, recordation shall be at the expense of JSH Enterprises, LLC.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals this 1 day of December, 1999.

ASSIGNOR:

KBS DEVELOPMENT, LLC

By: [Signature]
Kevin K. Kirkpatrick,
Authorized Member

ASSIGNEE:

JSH ENTERPRISES, LLC

By: [Signature]
James Hughes, Member
By: [Signature]
Susan P. Hughes, Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared **Kevin K. Kirkpatrick**, as the authorized Member of **KBS Development, LLC**, who acknowledged his execution of the foregoing "Declarant's Assignment for Vineyards of Fall Creek", and stated, under the penalties for perjury, that the representations made therein are true and correct to the best of his knowledge, information and belief.

WITNESS my Hand and Notarial seal this 1 day of December, 1999.

My Commission Expires:
12/20/06

County of Residence:
Marion

[Signature]

Notary Public [Signature]

J'netta K. Crawford

Notary Public [Printed]



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared **James E. Hughes** and **Susan P. Hughes**, as the Members of **JSH Enterprises, LLC**, who acknowledged their execution of the foregoing "Declarant's Assignment for Vineyards of Fall Creek", and stated, under the penalties for perjury, that the representations made therein are true and correct to the best of their knowledge, information and belief.

WITNESS my Hand and Notarial seal this 1 day of December, 1999.

My Commission Expires:
 12/20/06


Notary Public [signature]

County of Residence:

J'netta K. Crawford

Marion

Notary Public [Printed]
J'NETTA K. CRAWFORD
SEAL
Notary Public, Marion Co., State of Indiana
My Commission Expires Dec. 20, 2006

This instrument prepared by Sam Stoehr, Attorney at Law, 6100 N. Keystone Ave. #448, Indianapolis, IN 46220

3
DAA
MW

FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR VINEYARDS OF FALL CREEK

This First Amendment, is made as of this 10th day of January, 2006 to the Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek originally filed of record in Marion County Recorder's Office on October 21, 1996 as Instrument No. 960147013 (hereinafter "The Restrictions") by having received an affirmative vote of seventy-five percent (75%) of the lot owners of the Vineyards of Fall Creek as provided in the Restrictions, which amendments are as follows:

1. Paragraph 6 C (iii) in the Restrictions shall be amended to read as follows:

No one shall commit or permit any action or activity which could result in pollution of the lake, diversion of water, elevation of lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. Unless allowed by the Board of Directors, the lake may not be used for swimming, fishing, boating or for any other purpose, except for drainage of the Development.

2. Paragraph 9 is hereby amended so as to add subparagraph F which shall read as follows:

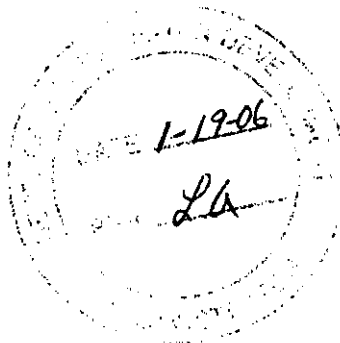
Responsibilities of the Owners. The owners shall each be responsible for paying the annual assessment as such assessment is provided for in these Restrictions regardless of whether an owner chooses to mow his or her lawn, except as may be determined otherwise by the Board of Directors.

The Vineyards of Fall Creek Property Owners' Association, Inc.

By: Frances C Muench
President
FRANCES C MUEENCH

By: Larry R Dietrich
Secretary
LARRY R DIETRICH

FILED
JAN 17 2006
LAWRENCE TOWNSHIP ASSESSOR



MARTHA A. WOMACKS
MARION COUNTY AUDITOR
61547 JAN 19 2006
DUTY OFFICER FOR TAXATION
SUBJECT TO FINAL APPEALANCE
FOR TRANSFER

01/19/06 02:34PM MARION COUNTY RECORDER
Inst # 2006-0006659
RN 17.00 PAGES: 3

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by Frances C. Maenoh and Larry P. Dietrich who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and correct to the best of their knowledge, information and belief.

WITNESS my Hand and Notarial seal this 10th day of January, 2006.

My Commission Expires:

10/29/2009

County of Residence:

Marion

Robert M. Koeller
Notary Public [Signature]

Robert m. Koeller
Notary Public [Printed]

This instrument prepared by: Robert M. Koeller, ITTENBACH JOHNSON TRETTIN & KOELLER, 6350 N. Shadeland Ave., Suite 4, Indianapolis, Indiana 46220.

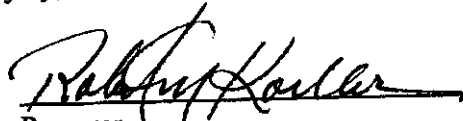
DECLARATION

I, the undersigned preparer of the attached deed, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.

Dated: 1-10-06


Preparer
ROBERT M KOELLER

JOSEPH P. MCQUADE
MARION COUNTY ASSESSOR

A201400005433

2014 JAN 14 10 48 33

01/22/2014 3:01 PM

JULIE L. VOORHIES
MARION COUNTY IN RECORDER

ONLY ENTERED FOR INFORMATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

FEE: \$ 17.50

PAGES: 2

By: SC

**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS FOR
VINEYARDS OF FALL CREEK**

This Second Amendment, is made as of this 17 day of December, 2013, to the Declaration of Covenants, Restrictions and Easements for Vineyards of Fall Creek originally filed of record in Marion County Recorder's Office on October 21, 1996 as Instrument No. 960147013 (hereinafter "The Restrictions") by having received an affirmative vote of seventy-five percent (75%) of the lot owners of the Vineyards of Fall Creek as provided in the Restrictions, which amendments are as follows:

Paragraph 4 in the Restrictions shall be amended to add subparagraph P to read as follows:

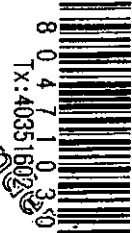
For the purpose of maintaining the congenial and residential character of Vineyards of Fall Creek and for the protection of the Owners with regard to financially responsible residents, leasing or rental of a dwelling by an Owner shall not be allowed, except as allowed by the Board of Directors in the case of hardship as determined by the Board of Directors. Each dwelling should be occupied by an Owner and their immediate family.

The Vineyards of Fall Creek Property Owners' Association, Inc.

By: Bruce B. Melchert Bruce B. Melchert
President

By: Janice L. Faherty Janice L. Faherty
Secretary

This document is provided for informational purposes only. Title Group and is not eligible for resale unless...



536.27
12.27
SC

This document is provided for

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by Bruce B. Melcher, President and Janice L. Taherty, Secretary, who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and correct to the best of their knowledge, information and belief.

WITNESS my Hand and Notarial seal this 30th day of December, 2013.

My Commission Expires: 9-29-2017

County of Residence: Marion

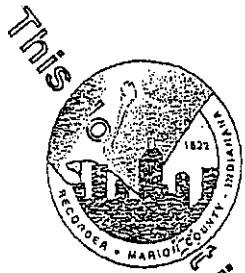
Robert M Koeller
Notary Public [Signature]
Robert M Koeller
Notary Public [Printed]

This instrument prepared by: Robert M. Koeller, ITTENBACH JOHNSON KOELLER & ABRAMS, P.A., 6350 N. Shadeland Ave., Suite 4, Indianapolis, Indiana 46220.

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

Tion Agal
Tion Agal

Official Notary National Title Group and is not eligible for resale under IC 36.2.7



Marion County Recorder

City County Building • 200 E. Washington Street • Suite 741 • Indianapolis, Indiana 46204
Office: 317-327-4020 • Fax: 317-327-3942

JULIE L. VOORHIES
RECORDER

MICHELE PERO
CHIEF DEPUTY

Correction Form for RECORDED Documents

Instrument # 1400005433 (check box if recording) has been recorded with this missing and/or incomplete information. You may re-record this document by cross referencing to the instrument number on the document. Please include the reason for re-record at the top of the document along with the fees for the re-recording. This Correction Form has been permanently attached to and recorded with your documents by Data Entry for the following reason:

- Attachment/Exhibit Missing at Time of Recording
- Assessor/Auditor's Stamp Missing at Time of Recording
- Re-record of transfer of property may need additional fees for Assessor/Auditor stamp. Please call 317-327-4907.
- Company Name Missing at Time of Recording
- Cross Reference Missing/Original Document Number Missing or Incorrect at Time of Recording
- Legal Description Incomplete/Illegible/Missing at Time of Recording
- Property Not Located in Marion County
- Names Do Not Match Throughout Document
- Notary Incomplete at Time of Recording
- To/From/Other Party Missing at Time of Recording
- POA Number Missing at Time of Recording
- Signatures Missing at Time of Recording
- Affirmation Statement Listed in I.C. 36-2-11-15 Missing at Time of Recording
- Address Missing at Time of Recording
- Amount of Lien Missing at Time of Recording
- Name of Trust Missing at Time of Recording
- Scanned Image Illegible
- Prepared By Missing at Time of Recording
- Reason for Re-recording Must be on the Document
- Include Fees for Re-record
- Other: _____

Missing Company Name in Notary

Date: _____ Clerk Initials: BBB

If you have any questions, please call DATA ENTRY at 327-5124, Monday-Friday, 8:00 a.m.-4:30 p.m.

This is proof of sale of title National Title Group and is not eligible for resale under IC 36.2.7