

STATE OF INDIANA  
PORTER COUNTY  
FILED FOR RECORD  
01/10/2012 10:00AM  
JON C. MILLER  
RECORDER

Naples-VPZ Development  
Beauty Creek Villas 421 W Lincoln Hwy  
Scherverville, In 46375

REC FEE: \$52.00  
PAGES: 20

SECOND AMENDED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR  
BEAUTY CREEK VILLA HOMES

SUPERCEDES DOC # 2005-037458

49-F-6

This Declaration of Covenants, Conditions, Restrictions and Easements is made by  
Naples-VPZ Development, LLC (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described as Final Plat Beauty Creek Villa Homes and incorporated herein by reference (hereinafter, the Property). Declarant intends by this Declaration to impose upon the Property mutually beneficial restriction under a general plan of improvement for the benefit of all owners of residential property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property as is now or may be subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all real property described in Exhibit "A" shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of and which shall run with the Property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Assessments" shall mean Assessments for Common Expenses provided for herein or by any amendment which shall be used for the purposes of promoting health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units, Common Areas and Community Areas, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. The Assessment shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

Section 2. "Association" shall mean and refer to the Beauty Creek Villa Homes Property Owners Association, Inc., an Indiana non-profit corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana Law. The Association shall be organized and governed in accordance with the Articles of Incorporation, By-laws and Rules and Regulations, attached hereto as Exhibits "B", "C" and "D", respectively.

Section 3. "Common Areas" shall mean those parts or parcels of the Property the title to which are conveyed from time to time by deed from Declarant to the Association, to be thereafter held and owned by the Association for the benefit of the Owners and Residential Units.

Section 4. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association; the cost of owning, maintaining, repairing and replacing the Common Areas, landscaping, and exterior of the Residential Units; the costs of the Community Association, including Community Assessments; and the cost of meeting the obligations of the Association under this Declaration, including any reasonable reserves for performing the obligations, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-laws and the Articles of Incorporation of the Association.

✓ Century 21 Executive  
ATTN: Bill McCabe

421 W Lincoln Hwy Scherverville, IN  
46375

✓✓

**Section 5.** "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

**Section 6.** "Developer" shall mean Naples VPZ Development LLC.

**Section 7.** "Mortgage" shall mean an instrument given as security to perform obligations, including a deed of trust.

**Section 8.** "Mortgagee" shall mean the Person to whom a mortgage is granted, including a beneficiary or holder of a deed of trust.

**Section 9.** "Mortgagor" shall mean the Person who grants a Mortgage, including the trustor of a deed of trust.

**Section 10.** "Occupant" shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by lease, license, contract or any other means, whether or not unlawful and shall include, without limitation, Owners, tenants, subtenants and their guests and invitees.

**Section 11.** "Owner" shall mean and refer to one or more Persons or entities who are record owners of a fee simple title to any Residential Unit which is a part of the Properties, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation, and excluding the Declarant.

**Section 12.** "Person" means a natural person, a corporation, a partnership, trustee or other legal entity.

**Section 13.** "Project" shall mean the property owned by Declarant and held for Exhibit "A" hereto.

**Section 14.** "Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto, as amended from time to time.

**Section 15.** "Residential Unit" shall mean one of the parcels located or to be located thereon, which is a part of the Property intended for independent ownership for use and occupancy as a single family residence. The boundaries of Residential Units shall be the lot lines for the parcels of the Property conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of Porter County or the City of Valparaiso, Indiana or other local government entity.

**Section 16.** "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

**Section 17.** "Community Areas" shall mean those parts or parcels within the Beauty Creek Villa Home Development of the Declarant which are owned by the Community Association, Beauty Creek Villa Homes, Inc., for the benefit of the Owners and for the benefit of the owners within Beauty Creek Villa Home, Inc.

**Section 18.** "Community Assessments" shall mean and include the actual and estimated expenses of operating the Community Association; the cost of owning and maintaining common areas and proportional share of lawn and common area maintenance, which are owned by the Community Association for the benefit of all Owners within the Beauty Creek Villa Homes Development.

**Section 19.** "Community Association" shall mean or refer to Beauty Creek Villa Homes Property Owners Association, Inc, an Indiana non-profit corporation, and its successors and assigns.

## **ARTICLE II**

### **PROPERTY RIGHTS AND OBLIGATIONS**

**Section 1.** Party Wall Rights, Restrictions and Easements. Subject to any other or additional provisions contained in any written agreement between the parties affected, each wall which is built as part of the original construction of a Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between Residential Units on and over such adjoining Residential Unit shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall will have a perpetual exclusive easement appurtenant to his or her Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his or her Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has shared the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute equally to the cost of the restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts of omissions. Notwithstanding any other provisions of this Declaration, any Owner who is by his or her negligence or willful act, or the negligence or willful acts of his or her occupancy causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contributions from any other Owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successor in title. Easements are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more Residential Units, whether or not such walls lie in all or in part within the boundaries of a Residential Unit. Every portion of a Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

**Section 2.** Easements of Ingress and Egress. Each Owner, as well as the lawful residents and Occupants of each Residential Unit, and their agents and contractors shall have and enjoy an easement for ingress and egress to and from their Residential Units, over and upon the lawn and landscaped areas of all Residential Units within a building which are connected in succession by party walls as provided in this Declaration, for the purpose of providing access to all parts of such Residential Unit for all purposes and activities associated with the normal and reasonable residential use of the Residential Unit, including, but not limited to, the maintenance, repair and replacement of the exterior of the building located on the Residential Unit and all lawn and landscaped areas and sidewalks which are a part of the Residential Unit.

**Section 3.** Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or setting or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, Occupant or the Association.

**Section 4.** **Easements for Utilities, Etc.** Declarant and Developer hereby reserve for itself and its designee (including without limitation, the City of Valparaiso and any utility easements) upon, across, over and under the Residential Units and Common Areas for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Declarant or Developer by written agreement upon such terms and conditions as are acceptable to Declarant or Developer. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property.

Without limiting the generality of the foregoing, there are hereby reserved for the City of Valparaiso or South Haven Utilities, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing and maintaining water meters.

Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association's Board of Directors or as provided in the development and sale by Developer. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Property.

**Section 5.** **Easement on Common Areas.** Owners shall have an easement for use and enjoyment on the Common Areas, and Developer, Declarant and the Association grant each Owner an easement for full use and enjoyment, subject to the Association's right to suspend such easement while an Owner is in violation of this Declaration.

**Section 6.** **Right of Entry.** The Association shall have the right and license, but shall not be obligated, to enter into any Residential Unit for emergency, security and safety, which right may be exercised by policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. There is hereby granted to the Association, and its agents, employees, managers and independent contractors, a license to enter upon all Residential Units to the extent necessary or appropriate for the conduct of the Association's responsibility under Article IV.

**Section 7.** **Easement on Community Areas.** Owners shall have an easement for use and enjoyment of the Community Areas provided the Owners have paid all Assessments required under this Declaration and are not otherwise in violation of this Declaration or the declaration of the Community Association.

**Section 8.** **Easement for Construction and Development.** All of the Property shall be subject to easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities for the convenient use and enjoyment of the Property. In addition, there is hereby reserved by the Declarant and its agents and employees, an easement for right of ingress, egress and regress on and across all of the Property for the purpose of construction of the improvements within the Property, including the right of temporary storage of construction materials. Declarant reserves blanket easements and the right to grant such specific easements over all of the Property as may be necessary in conjunction with the orderly development of the Property described in Exhibit A or any Subsequent Amendment to this Declaration.

**ARTICLE III**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 1.**      **Membership.** Every Owner, as defined in Section 12 of Article I, shall be deemed to have a membership in the Association. In the event the Owner of a Residential Unit is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. In no event shall more than one (1) vote be cast for each Residential Unit.

**Section 2.**      **Voting.** The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 1 hereof. There shall be only one (1) vote per Residential Unit, and the vote for such Residential Unit shall be exercised as those Persons themselves determine and they shall advise the Secretary of the Association prior to any meeting as to that determination. In the absence of such determination, the Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may not assign the voting right appurtenant to that Residential Unit to the lessee.

The voting rights of Members shall be subject to the Declarant's rights and provisions of Article XVI.

**ARTICLE IV**  
**MAINTENANCE**

**Section 1.**      **Association's Responsibility.** The Association's responsibility shall be to:

- a) Maintain common areas with mowings a minimum of three times during June thru October.
- b) Maintain lawns with mowings once per week during April thru October, weather permitting, unless an exception or variance is granted on an annual non self renewing basis.

**Section 2.**      **Owners Responsibility.** It shall be the obligation and responsibility of each Owner of a Residential Unit to cooperate in full and in good faith with each of the other Owners of Residential Units which are a part of the same building, with regard to performance of all maintenance, repair and replacement of portions of the building commonly shared but not maintained by the Association, including the cost thereof. For instance, if a main utility line (such as sanitary line) is shared, the cost of maintenance repair and replacement shall be shared equally. In the event of any dispute between or among Owners as to the foregoing obligation and responsibility, any one Owner shall have the right to require that such dispute be submitted to a simple majority decision of the Board of Directors of the Association, which decision shall be final and binding on all the Owners involved in that building.

**ARTICLE V**  
**INSURANCE AND CASUALTY LOSSES**

**Section 1.**      **Insurance.** Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association and all of its members as additional insureds for all damages or injury caused by the negligence of such Owner. The public liability insurance policy shall have at least Three Hundred Thousand (\$300,000) dollar single person limit as respects to bodily injury and property damage, and Five Hundred Thousand (\$500,000) dollar limit per occurrence.

The Association shall purchase a liability policy for the common areas with a minimum One Million (\$1,000,000) limit per occurrence.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the General Assessment, as defined in Article IX. Premiums for insurance obtained by Owners shall be paid by such Owners.

- A. All policies shall be written with a company licensed to do business in Indiana and in good standing with the State of Indiana. All such policies shall provide for a certificate of insurance for each Member to be furnished to the Association.
- B. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide the following:
  - 1. A waiver of subrogation by the insurer as to any claim against the Association's Board of Directors, its managers, the Owners and their respective tenants, servants, agents and guests;
  - 2. That no policy obtained by the association may be canceled, invalidated or suspended on account of any one or more individual Owners.
  - 3. That any "other insurance" clause in any policy exclude Association and Individual Owner's policies from consideration; and
  - 4. That no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

**Section 2. Individual Insurance.** By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Residential Units and structures constructed thereon as provided for in Section 1 of this Article V. Each individual Owner further covenants and agrees that in the event of any loss of damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the structure is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association.

## **ARTICLE VI** **NO PARTITION**

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may not be subject to this Declaration.

**ARTICLE VII**  
**CONDEMNATION**

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner and the Association shall be entitled to notice thereof.

**ARTICLE VIII**  
**RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION**

**Section 1.** **Creation of Assessments.** There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article VIII, Section 6. Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments, together with a delinquency fee at the rate of 12% per annum if unpaid for 30 days or more, costs and reasonable attorneys' fees, shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time of the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless the Board otherwise provides, the Assessments shall be paid in yearly installments.

**Section 2.** **Computation of Assessment.** It shall be the duty of the Board, at least thirty (30) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) and fifteen (15) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. The budget shall include the Common Expenses, the Community Assessment, and appropriate reserves. The portion of the budget for the Community Assessment payable by the Owners shall be included in the Assessments, and the portion payable shall be paid to the Community Association and paid on a yearly basis. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current budget year shall continue for the succeeding budget year.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time and except for an Assessment caused by violation of this Declaration or the negligence or intentional misconduct of an Owner, its licensees or invitees.

**Section 3. Special Assessments.** In addition to all Assessments authorized in Section 1, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, however, such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of fifty-one (51) percent of a quorum of Members entitled to vote at a meeting called for that purpose. The Association may be reimbursed for costs incurred in bringing a Member and his or her Residential Unit into compliance with the provisions of the declaration, amendments thereto, the Articles of Incorporation, the By-Laws and Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

**Section 4. Liens for Assessments.** When a notice of the lien has been recorded such Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association following foreclosure: (1) No right to vote shall be exercised on its behalf; (b) No Assessment shall be assessed or levied on it; and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys fees shall be maintainable without foreclosing or waiving the lien securing the same. The Community Association may not enforce the Assessments against the Owners for Community Assessments by a lien, but shall be entitled to file suit to recover a money judgment and to prohibit use and enjoyment of the Community Areas while assessment are delinquent.

**Section 5. Capital Budget and Contributions.** In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both the amount and timing by Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 2 of this Article. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 6. Date of Commencement of Annual Assessments.** The Assessments provided herein shall commence as to each Residential Unit on the day of the conveyance of title to an Owner by Declarant. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual Assessment shall be adjusted according to the number of months then remaining in that budget year. Declarant/Developer shall not be obligated to pay any Assessments.

**Section 6.1 Vacant Lot Rate.** No lot in the Subdivision on which construction of a dwelling has not commenced, shall be subject to any assessment, base, specific, or special, nor shall any assessments accrue or be incurred, base, specific, or special, on any lot on which construction of a dwelling has not commenced. Notwithstanding the foregoing, the Developer Rate for any lot shall not exceed twenty five dollars (\$25,00) annually. For purposes of this section, commencement of construction shall mean installation of a foundation for a dwelling. Upon commencement of construction, the lot shall be subject to assessment by the Association as provided for in the covenants and the bylaws of the Association.

**Section 7. Subordination of the Lien to First Date of Trust and First Mortgages.** The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any Mortgage upon any



Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment lien. However, the sale or transfer of any Residential Unit pursuant to judicial or non judicial foreclosure of a first mortgage shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Unit obtains title, his or her successors and assigns shall not be liable for the share of Common Expenses or Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Residential Units, including such acquirer, his or her successors and assigns.

#### **ARTICLE IX** **ARCHITECTURAL CONTROL**

No building, improvement, or other structure shall be commenced, erected or maintained on the property and no exterior addition, change or alteration shall be made until the plans, specifications, plot plan, and exterior elevations have been submitted to and approved in writing by the developer (Naples-VPZ Development, LLC), or its duly authorized agents or assigns. The submission so made shall also include the square footage of the proposed improvement. Architectural approval shall be the responsibility of the developer until 75% of the units have been built. At that time, the Property Owners Association shall create a committee and be responsible for approvals.

The Owner and Developer, his employees, agents and representatives shall not be liable for any damage, loss or prejudice suffered or claimed by any owner or contractor who submits such plans on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and; (e) the development of any property within the Beauty Creek Villa Homes in Porter County, Indiana. Any person submitting plans to the Owner and Developer shall hold the Owner and Developer harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

#### **ARTICLE X** **USE/DESIGN RESTRICTIONS**

**Section 1.**      **Conveyance.** Each lot shall be conveyed as a separately designated and legally described freehold interest subject to the terms, conditions and provisions hereof.

**Section 2.**      **Use.** All lots in this subdivision shall be used for single-family attached or detached residential purposes only.

**Section 3.**      **Minimum Floor Area Standard Lots.** The computation of square footage shall exclude porches, breezeways, garages & basements. All garages shall be attached to the principal residence structure and shall be sized for a minimum of two cars. Minimum square footage is per unit and is measured to the centerline of the building.

- a) All ranch & lofted ranch residential structures shall have a minimum of 1,400 square feet not including basement levels on normal or walkout lots. If the loft of a ranch exceeds 20% of the 1<sup>st</sup> floor square footage, it must meet the square footage minimums of a 1 ½ or 2 story.
- b) All 1 ½ and 2 story residential structures shall have a minimum total floor area of 1,900 square feet.

- c) Bi Level & Tri Level homes shall be prohibited.

Section 4.      Roof Pitches.      Roof pitches are to be a minimum of 6/12

Section 5.      Exterior.

1. All residential dwellings shall have sixty percent (60%) face brick or stone on the front first floor exterior thereof, and encouraged to use as much as possible.
2. Only horizontal pre-treated cedar siding, cement board siding, stone, dryvit, vinyl or brick may be used on the remainder of the structure. Aluminum siding and 4x8 sheets of siding shall be specifically prohibited.

Section 6.      Temporary Structures.      No structure of a temporary character by way of example, but not limited to a trailer, basement, tent, shack, garage, barn, or other building shall be used on the property at any time as a residence, either temporarily or permanently.

Section 7.      Storage Sheds.      No accessory storage shed or other additional structure shall be placed, erected or altered on any lot until the complete construction plans, site plan and specifications are approved pursuant to the section entitled, "ARCHITECTURAL CONTROL".

Section 8.      Types of Construction.      No building previously constructed elsewhere shall be moved upon any lot within this subdivision.

Section 9.      Appearance.      All plumbing stacks and roof vents or ventilators shall be located in the rear of the house roof.

Section 10.      Driveways.      All driveways are to be of rigid poured concrete or paver brick.

Section 11.      Storage.      No recreational vehicle (motor home, trailer, boat, camper, etc.) shall be permitted to be parked on any lot or anywhere in the subdivision for more than 48 hours unless in a garage.

Section 12.      Mailboxes      A standard mailbox approved by the developer shall be installed at the lot at purchaser or homeowner's expense.

Section 13.      Fences/ Pools.      Fences no greater than (5') five feet in height may be constructed around side and rear yards of any lot in the subdivision. A (6') six foot high fence may be allowed if the same is required by ordinance or statute around a swimming pool after the pool has been installed. In any and all events, wood and chain link fences are prohibited from use anywhere in the subdivision. All fences shall be of PVC material, brick or wrought iron and of a design approved by the architectural committee. Architectural approval is required on a site plan with specifications prior to the installation of the fence. No above ground swimming pools shall be installed on any homesite.

Section 14.      Sidewalks      Any residence or dwelling house erected on any lot shall provide a five (5') foot public sidewalk of poured concrete along all street frontage and within the public right-of-way. Concrete sidewalks must be installed at time of construction prior to occupancy. Waiver may be granted December 1-April 1 due to inclement weather.

Section 15.      Curbs      The lot purchaser or homeowner shall be responsible for the curbs

installed by the developer. Should a curb be damaged during or after construction, the builder or owner shall replace the damaged section within 90 days in a manner satisfactory to the appropriate governmental agency. Should owner fail to do this, developer may have the work done and record a lien against the property.

**Section 16.**      **Grading and Excess Material.**

- 1) Grading of lots shall be in compliance with the City of Valparaiso requirements and the master-grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent lot or lots.
- 2) All Excess material that is removed from any lot by reason of construction purposes shall be removed from this subdivision or shall be used for fill purposes on any lot or lots within Beauty Creek whose existing grades are lower than the adjacent top of street curb as determined by declarant. At the prior written direction of the Architectural Review Committee, said surplus material shall be removed and so deposited at the expense of the party charged with removing said material. Lot owners who are depositing excess material are responsible to level out material.
- 3) No building debris or concrete (including washouts) is to be placed on any lot other than the lot they are working on at present time. Owners, whether legal or reserve, are to maintain their lot(s) from debris, mowing and erosion.

**Section 17.**      **Lot Maintenance.** Builder or lot purchaser agrees to maintain lot and not allow weeds or grass to grow in excess of 6" in height. If builder fails to maintain lot, developer may hire a contractor to cut weeds and bill buyer or builder. Should bill not be paid within thirty (30) days, developer may record a lien against the lot.

**Section 18.**      **Erosion Control.** The front, side and rear yards of each lot shall be seeded or sodded in grass within nine (9) months after the Certificate of Occupancy is issued. Furthermore, all owners of record shall be responsible for Erosion Control maintenance of their lot from date of contract sale.

**Section 19**      **Trees** Homeowners shall be required to plant one (1) tree within ninety (90) days of occupancy in parkway between the curb and sidewalk and two (2) trees in the rear of the home. On corner lots, three (3) trees must be planted (1 in front and 2 on the side). Trees must be at least 1 ½ "caliper. Developer shall have the right to plant and charge homeowner tree costs and labor for non compliance with lien rights for non-payment within thirty (30) days.

**Section 20**      **Basketball Equipment** No basketball hoops or backboards are permitted on any Common Area, lot or Residential Unit.

**Section 21.**      **Control of Dogs.** Under no circumstances whatsoever shall any dogs be allowed on common areas which are a breed known to bite people, such as pit bulls, Doberman pinschers, German shepherds, Rottweilers, etc. Every person owning or having possession, charge, care, custody or control of any permitted dog shall keep such dog exclusively upon his or her own premises; provided, however, that such dog may be off the premises if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

**Section 22.**      **Rules and Regulations.** Rules and Regulations concerning the use of the Residential Units may be promulgated and amended by the Association acting by and made through its Board of Directors each of which shall be deemed to be incorporated herein by referenced and made a part

hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same become effective. The initial Rules and Regulations are attached hereto, made a part hereof, and marked Exhibit "D". The Rules and Regulations set forth on are enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all the Owners, are in furtherance of a plan to provide for the congenial occupation of the Residential Units to promote and protect the cooperative aspects of ownership, the value of the Residential Units, and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community, and are not arbitrary and capricious. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said Rules and Regulations in accordance with the provisions of Article XI.

**Section 23.** Fines. Notwithstanding any other provision herein to the contrary, the Board may assess a fine not exceeding Fifty (\$50.00) Dollar per day for violations of Article X and the Rules and Regulations of the Association, and the Association may record a lien against the Residential Unit to collect such fines. The Association shall be entitled to impose such a fine provided: (1) the Association gives written notice of the violation to the Owner; and (2) the Owner does not respond within ten (10) days of receipt of the notice of violation. If the Owner objects to such notice of violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of Article X and the Rules and Regulations within ten (10) days of receipt of the notice of violation, and thereafter the Board shall consider all written evidence and shall make a final determination thereon within fifteen (15) days of receipt of the Owner's written material. The Association shall respond to an Owner's objection in writing with a final determination on the issue. If the Owner does not adhere to the Association's final determination, the Association shall be entitled to levy a fine.

## **ARTICLE XI** **ENFORCEMENT**

Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of the Declaration and the Articles of Incorporation, By-laws, and the Rules and Regulations of the Association adopted pursuant thereto as may be amended from time to time. A default or violation by an Owner or Occupant of a Residential Unit shall entitle the Association, Declarant, Developer or any other Owner or Occupant to the following remedies:

### **Section 1.** Authority and Administrative Enforcement and Procedures.

A. Authority. Residential Units shall be used only for those uses and purposes set forth in this Declaration, and subject to the Covenants, Conditions, Restrictions and Easements set forth herein, and in the By-laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Article VIII Section 3, which shall constitute a lien upon the Owner's Residential Unit, and to suspend an Owner's right to vote or use the Common Areas, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XI that an Owner or Occupant has violated any provisions of this Declaration, the By-laws, or the Rules and Regulations as duly promulgated.

B. Procedure. The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

1. Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.
2. Notice. If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written

notice of a hearing. The notice shall contain; (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf and (d) the proposed sanction to be imposed.

3. Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice, affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirements shall be deemed satisfied if a violator appears at the meeting.

C. Sanctions. The Board of Director's power and authority to impose sanctions shall be governed by the following provisions:

1. All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all circumstances, which may include, but shall not be limited to, the following:
  - a) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XI, and in otherwise attempting to remedy the violation.
  - b) The amount of actual damage done to the other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of the same.
  - c) The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the association or any Member thereof, or Occupant of a Residential unit.
  - d) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.
2. All Special Assessment amounts imposed hereunder as a sanction shall be deemed to be a part of the General Assessment attributable to the Residential Unit occupied by the Violator, and shall be assessed against said Residential unit and its Owner as a Special Assessment to be due and payable on the date the next General Assessment would be due, and any such Special Assessments which are not paid as of the date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as General Assessments.
3. Nothing herein contained shall be construed as granting to the Board of Directors the power of attorney to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific findings of fact in accordance with the foregoing procedure, that the violators conduct was intentional, willful and malicious in nature. Said findings of fact shall set forth all facts and circumstances.

4. All other sanctions imposed shall be reasonably related to the violation found.
5. The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

**Section 2.** **Legal Remedies.** In addition to the administrative remedies set forth in Article XI Section 1, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

**Section 3.** **No Waiver of Rights.** The failure of the Association, Declarant, Developer, Occupant or an Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, Articles of Incorporation, By-law's and Rules and Regulations or by law, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

**Section 4.** **No Election of Remedies.** All rights, remedies and privileges granted to the Association, Declarant, Developer, Occupant or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-laws and Rules and Regulations or by law, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

## **ARTICLE XII** **AMENDMENT**

The Declaration and the Articles of Incorporation, By-laws, and Rules and Regulations may be amended in the following manner:

**Section 1.** **Declaration.** Subject to Article XIII, amendments to the Declaration shall be proposed and adopted as follows, provided however, that no amendment may revoke, remove or modify any right or privilege of the Declarant, without the Declarant's written consent.

A. **Notice.** Notice of the subject matter of any proposed amendment may be included in the Notice of any meeting of the Board of Directors at which any proposed amendment is to be considered.

B. **Resolution.** Except as provided in subparagraph D, hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the members (not three-fourths (3/4) of a quorum) at any regular or special meeting of the Members called and held in accordance with the By-laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).

C. **Recording.** The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Porter County, Indiana. A copy of such amendment shall also be sent to each Owner and his or her Mortgagee by registered or certified mail; provided, however, mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

D. **Amendments by Declarant.** Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other person (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal Home Mortgage Association, the

Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each entity, or (5) to add additional real estate by Subsequent Amendment or replat any real estate hereof. This subparagraph D. shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other persons having an interest of any kind in the Property, for so long as Declarant owns any Residential Unit or until the expiration of five (5) years from the date on which this Residential Unit is recorded, whichever occurs first. The amendment shall be signed by the Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Porter County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph C. hereof.

Section 2. Articles of Incorporation, By-laws, and Rules and Regulations. The Articles of Incorporation, By-laws, and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

### **ARTICLE XIII** **GENERAL PROVISIONS**

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall insure to the benefit of and shall be enforceable by the respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceedings (including settlement of any suit or proceedings, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

### **ARTICLE XIV** **MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-laws of Beauty Creek Villa Homes Association, Inc. Where indicated, these provisions apply to "Eligible Holders", as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written requests (such request to state the name and address of such holder, insurer or guarantor and the Residential Unit address) to the Association (therefore becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a) any proposed termination of the Association;
- b) any condemnation loss or any casualty loss which affects a partial portion of the Property or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- c) any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- e) any proposed action which would require the consent of Eligible Holders, as required in Section 2 of this Article.

**Section 2. Mortgagee's Rights Respecting Amendments to the Declaration.** To the extent possible under Indiana law, and notwithstanding the provisions of Article XII any amendment of a material nature must be approved by Eligible Holders representing at least fifty-one (51) percent of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a) voting rights;
- b) Assessments, Assessment liens, or subordination of Assessment liens;
- c) reserves for maintenance and repairs;
- d) boundaries of any Residential Unit;
- e) convertibility of Residential Units into Common Areas or vice versa;
- f) expansion of the Project (to include real estate not described in Exhibits "A" or not adjacent thereto), or the contraction of the Project or withdrawal of property to or from the Project;
- g) insurance or fidelity bonds;
- h) leasing of Residential Units;
- i) imposition or any restrictions on an Owner's right to sell or transfer his or her Residential Unit;



- j) a decision by the Association to establish self management when professional management had not been required previously by an Eligible Holder;
- k) a restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- l) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; provided however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holder's representing sixty-seven (67) percent of the votes of Residential Units; or
- m) any provisions that expressly benefit mortgage holders, insurers or guarantors.

**Section 3. Special FHLMC Provision.** So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- a) change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- b) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;
- c) fail to maintain liability insurance, as required by this Declaration.

The provisions of this Section 3 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a large percentage vote is otherwise required for any of the actions contained in this Section.

**Section 4. Mortgagee's Right to Cure.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of the policy and first Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.

## **ARTICLE XV DECLARANT'S RIGHTS**

**Section 1. Control by Declarant.** In addition to any other right or privilege given or granted or reserved to Declarant and Developer under this Declaration, the Declarant and/or Developer shall have the right to elect all members of the Board of Directors of the Association for as long as the Declarant has 10% ownership in any of the Residential lots. The members elected by the Declarant and/or Developer need not be residents or Owners or Members.

**Section 2. Absence of Warranty.** The Declarant specifically disclaims any warranty or representation in connection with the Property or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation set forth herein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may be one relied upon.

**Section 3. Assessment Exemption.** Declarant and Developer shall be exempt from any Assessment levied by the Association on any or all Residential lots owned by the Declarant, which are vacant and offered by the Declarant and Developer for the first time for sale.

Section 4.      Right to Amend Declaration.      The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-laws and Rules and Regulations, in accordance with Article XII Section 1 D.

Section 5.      Transfer of Rights.      Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records of Porter County, Indiana.

Section 6.      Litigation Against Declarant or Developer.      The Association shall not commence any litigation against the Declarant or Developer until at least seventy-five (75%) percent of the Members have approved of that action in a meeting of the Members or in a written consent of the Members.

#### ARTICLE XVI

Section 1.      Replatting.      Declarant shall have and hereby reserves the right, at any time or from time to time, to file a replat of all or any part of the Property which is owned by Declarant or all or any real estate which is added to the Property by Subsequent Amendment.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed as of this 9<sup>th</sup> day of January, 2012.

DOCUMENT WAS PREPARED BY BILL MCCABE

NAPLES VPZ DEVELOPMENT, LLC

BY: Dennis M. McCoy  
DENNIS M. MCCOY

William McCabe  
WILLIAM MCCABE

James L. Wieser  
JAMES L. WIESER

Melanie M. Sterba  
MELANIE M. STERBA

"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."

Bill McCabe

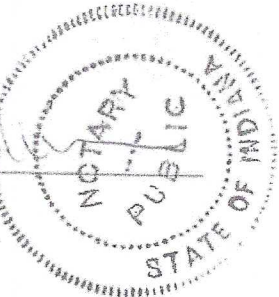
STATE OF INDIANA >  
> SS:  
COUNTY OF PORTER >

ACKNOWLEDGEMENT

I, Melissa Johnson, Notary Public in and for said County in the State aforesaid, do hereby certify that Dennis McCoy, William McCabe, James L Wieser & Melanie S Sterba of NAPLES VPZ DEVELOPMENT, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Dennis McCoy, William McCabe, James L Wieser & Melanie S Sterba appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his or her own free and voluntary act, and as a free and voluntary act of NAPLES DEVELOPMENT LLC, for the uses and purposes therein set forth.

Given under my hand and seal this 9<sup>th</sup> day of January, 2012.

Melissa Johnson  
Notary Public



My Commission Expires:  
9/20/14

County of Residence:  
LAKE



**FIRST AMENDED  
ARTICLES OF INCORPORATION OF  
BEAUTY CREEK VILLA HOMES PROPERTY OWNERS ASSOCIATION, INC.**

The undersigned incorporator desiring to form a corporation (hereinafter referred to as the "Corporation" pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as the "Act"), executes the following Articles of Incorporation:

**ARTICLE I  
NAME**

The name of the Corporation is Beauty Creek Villa Homes Property Owners Association, Inc.

**ARTICLE II  
PURPOSES**

The purpose for which the Corporation is formed is:

**Section 1.** To establish an incorporated association (hereinafter the "Association, Inc.") to administer a residential community known as Beauty Creek Villa Homes located in Porter County, Indiana, pursuant to the Declaration of Covenants, Conditions, Restrictions, and Easements for the Beauty Creek Villa Homes (hereinafter the "Declaration")

**Section 2.** This Association is organized for the purpose of providing a convenient means of administering the residential community by the Owners thereof. The documents creating the community provide for the ownership, operation, management, maintenance and use of Residential Units as described in said documents.

**Section 3.** The Association shall not engage in any activities for the profit of its Members, and shall conduct its affairs in such fashion and for such purposes other than for the pecuniary gain of its Members, directors, officers or incorporators.

**Section 4.** The Association shall have all of the common law and statutory powers of a corporation nonprofit which are not in conflict with the terms of these Articles.

**Section 5.** The Association shall have all of the powers reasonably necessary to implement the purpose of the Association, including but not limited in the following;

**EXHIBIT "B"**

- a) To make and collect Assessments against Members.
- b). To use the proceeds of Assessments in the exercise of its powers and duties.
- c) To Maintain, repair, replace and operate the property in accordance with the Declaration.
- d) To reconstruct improvements after casualty.

- e) To make and amend rules and regulations respecting the use of Residential Units.
- f) To enforce by legal means for the provisions of the Declaration, these Articles, the By-laws of the Association, and the rules and regulations in accordance with Article IV of the Declaration.
- g) To contract for the management of the Association and delegate to such contractor all powers and duties of the Association except such as are specifically required by the Declaration to have the approval of the Board of Directors or of the Members of the Association.
- h) To carry insurance for the protection of Owners and the Association against casualty and liabilities.
- i) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.
- j) To perform all other rights and obligations under the Declaration.

**Section 6.** All rights, powers and descriptions of purpose established by the Articles of Incorporation, shall be subject to the Declaration and all provisions contained therein as if fully set forth in these Articles, and shall further be subject to Indiana law governing nonprofit corporations.

**Section 7.** All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held only for the benefit of the Members in accordance with the provisions of the Declaration.

**Section 8.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

## EXHIBIT "C"

### ARTICLE III MUTUAL BENEFIT CORPORATION

The Corporation is a mutual benefit corporation.

### ARTICLE IV REGISTERED AGENT AND PRINCIPAL OFFICE

**Section 1.**      Registered Agent.      The name and address of the Corporation's Registered Agent for service of process is:

William McCabe  
421 W Lincoln Hwy  
Schererville, In 46375

**Section 2.**      Principal Office. The post office address of the principal office of the Corporation is:

421 W Lincoln Hwy  
Schererville, In 46375

**ARTICLE V**  
**MEMBERSHIP**

**Section 1.** Classes of Membership, and Rights, Preferences and Limitations of Classes of Membership. There shall be one (1) class of Members, as set forth in Article III, Section of the Declaration

**Section 2.** Voting Rights of Classes. Voting rights of Members shall be set forth in Article III, Section 2 of the Declaration.

**ARTICLE VI**  
**DIRECTORS**

**Section 1.** Number of Directors. The initial Board of Directors is composed of three (3) members. Provided, however, that the exact number of directors shall be prescribed from time to time in the By-laws of the Corporation; AND PROVIDED FURTHER THAT UNDER NO CIRCUMSTANCES SHALL THE MINIMUM NUMBER BE LESS THAN THREE (3). The Board of Directors shall be appointed by the Declarant or Developer until that power is terminated under the provisions of the Declaration.

**Section 2.** Names and Post Office Addresses of the Directors. The names and post office addresses of the initial Board of Directors of the Corporation are:

Dennis M. McCoy  
7410 W 101st  
Crown Point, In 46307

William McCabe  
1634 Truchard Ct  
Crown Point, In 46307

James I. Wieser  
425 W Lincoln Hwy  
Scherverville, In 46375

**ARTICLE VII**  
**INCORPORATOR**

The name and post office address of the incorporator of the Corporation is:

Beauty Creek Villa Home Property Owners Association, Inc.  
421 W Lincoln Hwy  
Scherverville, In 46375

**ARTICLE VIII**  
**STATEMENT OF PROPERTY (IF ANY)**

A statement of the property, and an estimate of the value thereof, to be taken over by the Corporation at or upon its incorporation are as follows:

NONE

**ARTICLE IX**  
**PROVISIONS FOR REGULATIONS OF BUSINESS AND**  
**CONDUCT OF THE AFFAIRS OF THE CORPORATION**

Other provisions, consistent with the laws of this State, for the regulation and conduct of the affairs of the corporation, and creating, defining, limiting or regulating the powers of the Corporation, the directors of the Members of any class or classes of Members are as follows:

**Section 1.** The affairs of the Association, its management and operations shall be governed by the terms and provisions of the Declaration, these Articles of Incorporation and the By-laws and Rules and Regulations of this Corporation

**Section 2.** The power to make, alter, amend or repeal the By-laws of the Corporation shall be vested in the Members of the Association, subject to the terms, provisions and conditions contained in the Declaration and the By-laws of this Corporation.

**Section 3.** Directors of the Association shall be elected at the annual meeting of the Members in the manner provided by the By-laws except for so long as the Declarant of the Declaration continues to legally or equitably own any of the Residential Units, the Board of Directors of the Association shall be elected by the Declarant and such Directors need not be residents of Residential Units or Owners; provided, however, that on and after five (5) years after the date of the recording of the Declaration the foregoing provisions shall not apply.

**EXHIBIT "A"**

**Legal Description**

**Lots 1-110 in Beauty Creek Villa Homes, as per plat thereof recorded Dec 5, 2005 in Plat File 49-F-6, as Document No. 2005-037457, in the Office of the Recorder of Porter County, Indiana.**

**Re-Plat of Lots 2,3,4,5,6,7,15,16,17,18,19,24 and 25 in Beauty Creek Villas Homes Recorded Oct 12, 2007 in Plat File 49-F-6A as Document No. 2007-031025.**



EXHIBIT "D"

**BY-LAWS**  
**OF**  
**BEAUTY CREEK VILLA HOMES**  
**PROPERTY OWNERS ASSOCIATION, INC.**

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BY-LAWS  
OF  
BEAUTY CREEK VILLA HOMES  
PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I  
NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS

Section 1.      Name.      The name of the Association shall be Beauty Creek Villa Homes Property Owners Association, Inc., (hereinafter referred to as the "Association").

Section 2.      Principal Office.      The principal office of the Association shall be located initially at the principal business location of Declarant, and thereafter such location as determined by the Board of Directors. The association may have such offices, either within or without the State of Indiana, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3.      Definitions.      The words used in these By-laws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Beauty Creek Villa Homes Property Owners Association, Inc. (said Declaration as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration" ) unless the context shall prohibit.

ARTICLE II  
ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

Section 1.      Membership.      The Association shall have one (1) class of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2.      Place of Meetings.      Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either in the Project or as convenient thereto as possible and practical.

Section 3.      Annual Meetings.      The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors.

Section 4.      Special Meetings.      The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by at least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5.      Notice of Meetings.      Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) days nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

**Section 6.** Waiver of Notice. Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed a waiver by such member of notice at the time, date and place thereof, unless such Member specifically objects to a lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to vote.

**Section 7.** Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least twenty-five (25%) percent of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

**Section 8.** Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

**Section 9.** Proxy. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Residential Unit or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy.

**Section 10.** Majority. As used in these By-laws, the term "majority" shall mean those votes of Owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total number.

**Section 11.** Quorum. Except as otherwise provided in these By-laws or in the Declaration, the presence in person or by proxy of one-third (1/3) of the Members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

**Section 12.** Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action without a Meeting. Any action required by law to be taken at a meeting of the Members or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

### ARTICLE III BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

#### A. Composition and Selection.

Section 1. Governing Body: Composition. The Affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article III, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time.

Section 2. Directors During Declarant Control. The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant until such time as is specified in the Declaration, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be owners or residents in the project. After the period of Declarant appointment, all Directors must be Members of the Association.

Section 3. Number of Directors. The number of Directors in the Association shall be not less than three (3) nor more than five (5), as the Board of Directors may from time to time determine by resolution. The initial Board of Directors shall consist of three (3) members and are identified in the minutes of the first meeting of the Board.

Section 4. Nomination of Directors Except with respect to Directors selected by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members to solicit votes.

Section 5. Election and Term of Office. Notwithstanding any other provision contained herein: At the first annual meeting of the membership after the termination of the Declarant's right to select directors and at each annual meeting of the membership thereafter, Directors shall be elected. All Directors shall be elected at-large. All Members of the Association shall vote upon the election of Directors. So long as there are three (3) Directors, the term of one (1) Director shall be fixed at one (1) year, and the term of one (1) Director shall be fixed at two (2) years, and the term of one (1) Director shall be fixed at three (3) years. The members of the Board of Directors shall hold office until respective successors have been elected by the Association.

Section 6. Removal of Directors and Vacancies. Unless the entire Board is removed from office by the vote of the Association Members, an individual Director shall not be removed prior to the expiration of his or her term of office, except by the vote of a majority of Members.

In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 7. Voting Procedure for Directors. The first election of the Board shall be conducted at the first meeting of the Association. At such election, the Members of their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

**B. Meetings**

Section 8. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place shall be fixed by the Board.

Section 9. Regular Meetings. 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 the Directors, but at least two (2) meetings shall be held during each fiscal year after Declarant control has expired. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (1) by personal delivery; (b) written notice by first class mail; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by electronic e-mail. All such notices shall be given or sent to the Director's address, e-mail or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or e-mail shall be delivered, telephoned or e-mailed at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (1) quorum is present, and (2) either before or after the meeting each of the Directors not present signs a written waiver or notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association at a regular or special meeting of the Association.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 15. Open Meeting. All meetings of the Board of Directors shall be open to all Members, but Members other than Directors may not participate in an discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

Section 16. Executive Sessions. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may be involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 17. Action without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent is in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as set forth by the Declaration, Articles of Incorporation or these By-laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the Managing Agent or Manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but no limitation:

- a) Preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- b) making Assessments to defray the Common Expenses, establishing means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment, provided otherwise determined by the Board of Directors, the annual Assessment against the proportionate share of the Common Expenses shall be payable in yearly installments, each such installment to be due and payable in advance on the first day of the year for said year;
- c) providing for the operation, care, upkeep and maintenance of any Common Area;
- d) designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Association, its property, and any Common Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;
- e) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- f) making and amending rules and regulations;
- g) opening of bank accounts on behalf of the Association and designating the signatories required;

- h) making or contracting for the making of repairs, additions and improvements to or alterations of any Common Area in accordance with the other provisions of the Declaration and these By-laws after damage or destruction by fire or other casualty;
- i) enforcing by legal means the provisions of the Declaration, these By-laws, and the Rules and Regulations adopted by it and bringing any proceeds which may be instituted on behalf of or against the Owners of the Association;
- j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- k) paying the cost of all services rendered to the Association or its members and not chargeable to Owners;
- l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners.
- m) Make available to any prospective purchaser of a Residential Unit, any Owner of a Residential Unit, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Residential Unit, current copies of the Declaration, the Articles of Incorporation, the By-laws, Rules and Regulations, and all other books, records and financial statements of the Association
- n) Permit utility suppliers to use portions of any Common Area reasonably necessary to the ongoing development or operation of the Project.

Section 19. Management Agent.

- a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-laws, other than the powers set forth in subparagraphs a), b), d), f), g), and 10 of Section 18 of this Article III. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.
- b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board of resolution specifically determines otherwise:

- a) cash basis accounting shall be employed;
- b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of Twenty-five (\$25.00) Dollars and under;



- c) cash accounts of the Association shall not be commingled with any other accounts;
- d) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise ; any thing of value received shall benefit the Association;
- e) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and
- f) commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:
  - (i) an Income and Expense Statement reflecting all income and expense activity for the preceding six (6) months on a cash basis;
  - (ii) a Balance Sheet as of the last day of the Association's fiscal year and an Operating Statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year.
  - (iii) a Delinquency Report listing all Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of Assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which shall be considered to be delinquent on the fifteenth (15<sup>th</sup>) day of each month; and
  - (iv) an annual report consisting of at least the following shall be distributed within sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) statement of changes in financial position for the fiscal year. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without an audit from the books and records of the Association.

#### ARTICLE IV OFFICERS

**Section 1. Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

**Section 2. Election, Term of Office and Vacancy.** The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term

**Section 3. Removal** Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

**Section 4. Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties may

from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by the President or by such other person or persons as may be designated by resolution of the Board of Directors.

## ARTICLE V COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## ARTICLE VI MISCELLANEOUS

Section 1. Fiscal Year. The initial fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of the Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration or these By-laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Indiana Law, the provisions of Indiana law, the Declaration, the Articles of Incorporation, and the By-laws (in that order) shall prevail.

Section 4. Books and Records

a) Inspection by Members and Mortgagees. The Declaration and By-laws, membership register, books of account, and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Project as the Board shall prescribe.

b) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

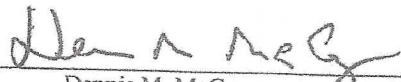
Section 5. Notices Unless otherwise provided by these By-laws, all notices, demands, bills, statements or other communications under these By-laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

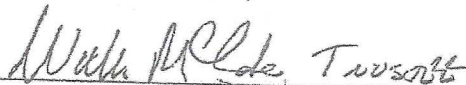
a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Residential Unit of such Owner; or

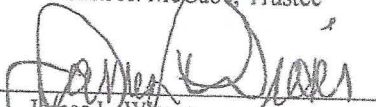
b) if to the Association, the Board of Directors, or the Managing Agent, if any, or at such other address shall be designated by the notice in writing to the Owners pursuant to this Section.

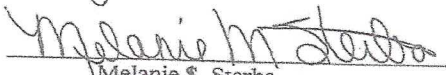
Section 6. Amendment. Declarant may amend the By-laws in accordance with the Declaration. These by-laws may be amended otherwise only by the affirmative vote (in person or by proxy) or written consent of Members representing two-thirds (2/3) of the total votes of the Association (not a majority of a quorum).

IN WITNESS WHEREOF, I, the undersigned, do hereby execute these Articles of Incorporation and certify the trust of the facts herein stated this 13 day of JAN, 20 09.  
I hereby verify subject to penalties of perjury that the facts contained herein are true.

  
Dennis M. McCoy

  
William H. McCabe, Trustee

  
James L. Wieser

  
Melanie S. Sterba  
M