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Subdivision Covenants and Restrictions

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COVENANTS

FOR

BUCKTONDOWN FARMS

BOONE COUNTY
DECLARATION OF COVENANTS AND RESTRICTIONS 
of BUTTONDOWN FARM

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF BUTTONDOWN FARM (this "Declaration"), is made as of the 1st day of March, 1999, by Buttowndown Farm, LLC, an Indiana limited liability company ("Declarant") the legal owner of the real estate described in the Plat of "Buttowndown Farm" which was recorded in the Office of the Recorder of Boone County, Indiana on March 3, 1999, as Instrument No. 9902851. A copy of the legal description of such real estate is attached hereto as Exhibit A.

WITNESSETH:

WHEREAS, Declarant intends, but is not obligated, to develop a residential subdivision at Buttowndown Farm;

WHEREAS, Declarant desires to provide for the preservation and the enhancement of the Property in Buttowndown Farm, and to this end desires to subject the Plat to the covenants, restrictions, easements and charges hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future Owners thereof;

WHEREAS, Declarant shall incorporate under the laws of the State of Indiana a non-profit Corporation known as Buttowndown Farm Homeowners Association, Inc. to which may be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments or charges created herein and promoting the recreation, health, safety and welfare of the Owners of Lots in Buttowndown Farm and performing the duties and obligations required under this Declaration;

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Property as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of the Plat for the improvement and sale of Lots in the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof which are subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Property or any part or parts thereof.
ARTICLE I
GENERAL PROVISIONS

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

1. Architectural Review Board. That entity established pursuant to this Declaration for the purpose of establishing, monitoring and enforcing the design, construction, and landscaping requirements necessary to ensure a high standard of aesthetics and quality of construction in order to enhance property values throughout the Subdivision.

2. Articles. The Articles of Incorporation of the Association, as amended from time to time.

3. Assessments. All sums lawfully assessed against the members of the Association or as declared by this Declaration, any Supplemental Declaration, the Articles or the Bylaws.


5. Board of Directors. The governing body of the Association elected by the Members in accordance with the Bylaws.

6. Buttontown Farm. The name by which the Plat and Subdivision shall be known.

7. Builder. A builder or contractor who is an Owner of a Lot merely to facilitate construction of a Residence on the Lot for immediate resale.

8. Bylaws. The Bylaws of the Association as amended from time to time which shall provide for election of directors and officers and other governing officials of the Association.

9. Common Area. The area designated in the Plat as Common Area which shall be used and maintained for the benefit of all Owners in the Subdivision.

10. Common Facilities. a) the Drainage System, b) the Entry Ways, c) any utility service lines, street lights or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, d) the Common Area, and e) any
areas of land i) shown on the Plat, ii) described in any recorded instrument prepared by Declarant or its agents, or iii) conveyed to or acquired by the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots;

11. **Declarant.** Buttondown Farm, LLC its successors and assigns to its interest in the Property other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicates an intent that the grantee assume the rights and obligations of Declarant).

12. **Drainage Board.** The Boone County Drainage Board.

13. **Drainage System.** The interconnected system of detention or retention ponds, piping, lines, swales, culverts, ditches and other structures, facilities and improvements constructed to provide storm water drainage for all of the Lots in Buttondown Farm.

14. **Entry Ways.** The landscaping materials, fencing, signage, lighting and other structures constructed to serve as an entrance to Buttondown Farm or a part thereof exclusive of the street pavement, curbs and drainage structures and tiles).

15. **Installed Trees.** Any tree which is installed on a Lot by Declarant or an Owner pursuant to the Subdivision Development Plan or a Lot Development Plan.

16. **Landscape Easement.** Any portion of a Lot or Common Area denoted on the Plat or established herein as an area to be landscaped and maintained by the Association.

17. **Lot.** A platted lot as shown on the Plat.

18. **Lot Development Plan.** a) a site plan prepared by a licensed engineer or architect, b) foundation plan and proposed finished floor elevations, c) building plans, including elevation and floor plans, d) building material schedules and specifications, e) landscaping plan, f) tree preservation plan and g) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot or the construction or alteration of a Residence or other structure or improvement thereon.

19. **Lot Maintenance Services.** Maintenance services which may be provided and administered by the Association for the individual Lots in a Section within the Subdivision. Such services may include (without obligation to provide any of such
services and without limitation to this list) general landscape maintenance, lawn mowing, service of irrigation systems and snow removal from walks and driveways.

20. **Maintenance Costs.** All of the costs necessary to keep the Common Facilities operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair and replacement of all or any part of any such Common Facilities, payment of all insurance with respect thereto, all taxes imposed on the Common Facilities and on the underlying land, leasehold, easement or right-of-way, and any other expense related to continuous maintenance, operation or improvement of the Common Facilities, and all expenses related to the performance of the duties of the Association under this Declaration.

21. **Mortgagee.** The holder of a first mortgage on a Residence or Lot.

22. **Native Trees.** Any living tree existing on a Lot at the time of conveyance from Declarant to an Owner other than Declarant.

23. **Owner.** A Person, including Declarant, who at the time has record fee simple title in a Lot, but excluding in all cases any Person who has or is acquiring an interest in a Lot merely as security for the performance of an obligation, such as a Mortgagee. Notwithstanding the foregoing, a Mortgagee or other holder of a security interest in a Lot who forecloses on such interest and obtains record fee simple title to the Lot shall be an Owner.

24. **Person.** An individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

25. **Plat.** The final plat of the Property recorded in the Office of the Recorder of Boone County, Indiana, for the Property.

26. **Property.** The real estate described in Exhibit A.

27. **Reserve for Replacements.** A fund to be established and maintained by the Association for the purpose of providing for major repairs or replacements to the Common Facilities.

28. **Residence.** Any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garages and recreational facilities usual and incidental to the use of a single family residential lot.
29. **Restrictions.** The covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Rules and Regulations, as the same may, from time to time, be amended.

30. **Rules and Regulations.** The document containing rules, regulations, policies and procedures adopted by the Architectural Review Board or the Association, as the same may from time to time be amended.

31. **Section 1.** That portion of the Property that is depicted on the Plat as Section 1 which is comprised of Lots numbered one (1) through thirty-one (31), inclusive.

32. **Section 2.** That portion of the Property that is depicted on the Plat as Section 2 which is comprised of Lots numbered thirty-two (32) through forty-seven (47) inclusive.

33. **Subdivision.** The Property as platted and improved in accordance with the Subdivision Development Plan.

34. **Subdivision Development Plan.** That plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of the Property, as such may be amended from time to time, and including, but not limited to, the Plat, construction plans, grading and utility plans, landscaping, lighting and signage plans.

35. **Supplemental Declaration.** Any future supplement or amendment to this Declaration which amends or modifies the terms and provisions herein.

36. **Town.** The Town of Zionsville, Indiana.

B. **Declaration.** Declarant hereby expressly declares that the Property shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by 1) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or 2) the act of occupancy of any Lot, shall accept such deed, contract or occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these Restrictions to keep, observe, comply with, perform, and enforce such Restrictions and agreement.
ARTICLE II
CONSTRUCTION OF RESIDENCES

A. **Setbacks.** Building setback lines are hereby established as shown on the Plat, between which lines and the property lines no building or structure shall be erected or maintained (except walls and fences to the extent permitted hereby). No buildings, structures or other improvements shall be erected 1) closer to any side lot line than ten (10) feet, 2) closer to the rear lot line than twenty-five (25) feet (unless a greater setback is established on the Plat, in which case the Plat shall govern), or 3) closer to the front lot line than twenty-six and one half (26.5) feet; nor shall the front of a Residence be set back further than thirty-six and one half (36.5) feet from the front lot line, unless such construction is approved by the Architectural Review Board and is not in violation of the Town’s Zoning or Subdivision Control Ordinances. Where buildings are erected on more than one single Lot, the foregoing restrictions shall apply to the combined Lots (or parts thereof) as if they were one single lot, and the restrictions applied based on the distance from the buildings, structures or other improvements to the lot lines of the Lots adjoining the combined Lot.

B. **Size of Residences.** The Residences in the Subdivision shall comply with the minimum size requirements established herein. All measurements shall be measurements of finished and livable floor area, exclusive of any basement, garage, attic or porches.

1. **Section 1.** The following size restrictions shall apply to all Residences constructed in Section 1 of the Subdivision.
   a. Single story Residences shall have not less than 2,200 of finished and livable floor area on the ground level.
   b. Multi-story Residences shall have not less than 2,500 square feet of finished and livable floor area, not less than 1,300 square feet of which shall be on the ground level

2. **Section 2.** The following size restrictions shall apply to all Residences constructed in Section 2 of the Subdivision.
   a. Single story Residences shall have not less than 2,500 of finished and livable floor area on the ground level.
b. Multi-story Residences shall have not less than 2,750 square feet of finished and livable floor area, not less than 1,350 square feet of which shall be on the ground level.

The foregoing minimum size restrictions may be varied (by not more than 200 square feet for single story Residences or more than 100 square feet for multi-story Residences) upon approval by 1) Declarant, as long as such exists, 2) the Architectural Review Board, 3) the Board of Directors of the Association, to the extent such has been established, and 4) two thirds (2/3) of all Owners other than Declarant.

C. Commencement and Completion of Construction. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Architectural Review Board agrees to a later landscaping completion date. Unless a delay is caused by strike, war, court injunction or act of God, the Owner (other than Declarant) of any Lot (which on the date of purchase from Declarant is not improved with a Residence) shall commence construction of a Residence upon the Lot within eighteen (18) months from the date the Owner acquired title thereto and shall complete construction of such Residence within one (1) year after the date of commencement of the building process. Upon the failure of either of the foregoing to occur, Declarant may:

1) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Boone County the lesser of:
   a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance of the Lot, plus any costs and expenses which the Owner may prove to have been incurred in connection with the commencement of construction of a Residence on the Lot; or
   b) the then fair market value of the Lot, as improved, determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Boone County Circuit or Superior Court; or

2) obtain injunctive relief to force the Owner to proceed with construction of a Residence for which a Lot Development Plan has been approved by the Architectural Review Board upon application by such Owner; or
3) pursue other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for or receive approval of a Lot Development Plan by the Architectural Review Board shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the lot within the time periods specified herein. For the purposes of this subparagraph, construction of a Residence will be deemed "commenced" when footings have been installed on the Lot and will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

D. **Construction Materials.** Without limiting the right of the Architectural Review Board to impose more stringent standards, no Residence may be constructed using aluminum or vinyl siding and all Residences must be constructed on masonry or poured concrete foundations.

E. **Temporary or Accessory Structure.** No construction shacks, outbuildings or storage barns shall be erected or situated on any Lot herein, except for use by a contractor during the construction of a Residence, provided such contractor's temporary structure shall be promptly removed from the Lot upon substantial completion of the residence and shall not be permitted to remain on the Lot in any event for more than twelve (12) months after the commencement of construction of the Residence.

F. **Front Porches.** Every Residence and Lot Development Plan shall include an outdoor living area which 1) is immediately adjacent to, attached to or part of the front (street side) facade of the Residence (for corner lots, the facade on which the primary entrance is located), 2) is directly accessible by a door from the interior of the residence, 3) has a hard surface floor (wood, concrete, stone, brick, other masonry or other such material as may be approved by the Architectural Review Board) and 4) is designed in such a manner as to permit furniture to be comfortably placed thereon and encourage the use thereof by the Owners and their guests. The inclusion of a covered porch meeting these criteria, integrated into the design of the Residence, comprised of not less than one hundred fifty (150) square feet of usable floor area and being not less than eight (8) feet deep as measured on a perpendicular line from the exterior face of the adjacent front wall to the nearer of a) the inside edge of the closest railing or column or b) the floor edge, shall satisfy this requirement. Other methods of satisfying this requirement, e.g., uncovered porches, patios, gazebos, trellises or other such structures, may be approved or disapproved by the Architectural Review Board at its sole discretion.

G. **Driveways.** All driveways shall be constructed of concrete and maintained free of debris.
H. **Garages.** No front loading garages shall be erected on a Lot. No residence shall have less than a full-size two (2) car garage, nor more than a full-size four (4) car garage.

I. **Yard Lights.** Each Owner or his contractor shall install and maintain a light in operable condition on his Lot at a location, having a height and of a type, style and manufacturer approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board, insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

J. **Storage Tanks.** No gas or oil storage tanks shall be permitted on the Property except for temporary use in connection with the construction of the Subdivision or a Residence.

K. **Mailboxes.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacturer approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

L. **Septic Systems.** No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by the Town or other public agency or public or private utility) shall be installed or maintained on any Lot.

M. **Water Systems.** Each Owner shall connect to the public water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connection thereto.

N. **Irrigation Systems.** Each Owner shall install an automated underground irrigation system sufficient to regularly water the front and side yard lawn areas of the Lot.

O. **Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction (although the Owner of the downstream Lot may gather and channel such drainage into the Drainage System so long as such acts do not materially and adversely affect the drainage of upstream and downstream Lots), across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. Notwithstanding the foregoing, the elevation of a Lot shall not be changed so as to affect materially the surface elevation, grade or drainage of surrounding Lots.
Perimeter foundation drains, sump pump drains and downspouts shall be outletted into the Drainage System by underground drain tile, provided, however, that gravity-fed drainage from drain spouts may be drained into surface swales at the rear of a Lot when the downspout outlet is located below the elevation of the Drainage System at the street. Each Owner shall maintain all such subsurface drains and tiles located on his Lot which serve only his Lot and shall be liable for the cost of all repairs thereto or replacements thereof. All floor drains shall drain into the sewage disposal system of the Residence. In no event shall sump pumps be outletted into the sanitary sewage disposal system of the Residence.

P. **Landscaping.** All landscaping installed or maintained upon a Lot shall be of types, species, size and configuration approved by the Architectural Review Board as part of the Lot Development Plan in the case of initial construction or by special application to the Architectural Review Board for any alterations or additions to the initial approved landscaping plan. Without limiting the right of the Architectural Review Board to establish more stringent or specific requirements, the minimum required expenditure for planting materials (exclusive of sod or grass) between the front of the Residence and the front lot line shall be Three Thousand Five Hundred Dollars ($3,500.00) for Residences in Section 1 and Five Thousand Dollars ($5,000.00) for Residences in Section 2. Such amounts shall be adjusted annually commencing two (2) years after the recording of this Declaration based upon inflation established by the increase in the consumer price index from year to year.

Q. **Tree Preservation.** Residences shall be designed and placed on the Lot in a manner so as to minimize the loss of Native Trees on the Lot. No living tree with a trunk diameter greater than two (2) inches may be removed in an area which is twenty-five (25) feet inside the perimeter of the Property and no living tree with a trunk diameter greater than six (6) inches may be removed from other areas of a Lot without approval from the Architectural Review Board. Any tree so removed (except for those trees located within fifteen (15) feet of the location of the Residence as established in an approved Lot Development Plan) shall be replaced on the Lot by the Owner with a new tree with a trunk of not less than three (3) inches in diameter. Such replacement shall be in addition to any other landscape requirements established herein or by the Architectural Review Board. The Lot Development Plan shall include a tree preservation plan which shall identify any tree with a trunk greater than six (6) inches in diameter on the Lot which is to be removed and any other significant Native Trees on the Lot which may be affected by the construction of the Residence and its appurtenances.

R. **Inspection.** Declarant, the Association, the Architectural Review Board or their representatives shall have the right to enter upon any Lot, without being a trespasser, to inspect any work being performed thereon, in order to assure compliance with this Declaration and the
Rules and Regulations and conformity with the Lot Development Plan and with any other plans or submittals made to them and upon which any approvals required by this Declaration are based.

S. Sidewalks. The Owner of a Lot shall, as a part of his, her or its construction on the Lot, be responsible for installation of a five (5) foot wide concrete sidewalk across the entire width of the Lot at the front property line of the Lot. Such sidewalk shall conform in all respects with the construction requirements of the Town and shall be located as provided in the Subdivision Development Plan. Such sidewalks must be installed within thirty (30) days of occupancy of the Residence, but no later than two (2) years after acquisition of the Lot by an Owner other than Declarant. For all Lots not sold by Declarant, Declarant shall install sidewalks no later than December 31, 2002.

ARTICLE III
MAINTENANCE OF LOTS

A. Land Use. All Lots in the Subdivision shall be used solely for residential purposes. No business, trade, profession or other calling of any nature shall be carried on or conducted at any time on any Lot in the Subdivision unless 1) the owner has an occupation or business which may be conducted in his home without increased traffic to the home, 2) the Declarant or the Association has consented to the business use, and 3) the use is allowed under applicable zoning laws. No structure shall be erected, altered, or placed on any Lot of the Subdivision, other than one detached single-family dwelling, and a private attached garage for not less than two or more than four cars. No portion of any Lot or portions of any Lots may be sold or subdivided so that there will be thereby created a greater number of lots than the original number platted.

B. Vehicle Parking. No camper, motor home, truck, boat, motorcycle, bus, commercial vehicle of any kind, or disabled vehicle may be parked or stored outside overnight or longer on any Lot or on the streets or Common Areas of the Subdivision.

C. Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Buttontown Farm and the sale of Lots therein and such signs as may be located on the Common Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising the property for sale or may be displayed by a Builder to advertise the property during construction and sale. Declarant, in its sole discretion, may allow such additional signage to be displayed by any Builder that owns, or has contracted to purchase from Declarant, five (5) or more Lots in the Subdivision.
D. **Fencing.** Unless expressly approved by the Architectural Review Board, no fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building setback line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute the appearance of a "hedge". No chain link fence shall be erected upon a Lot. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any detention pond. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight line.

E. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

F. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

G. **Livestock and Poultry.** No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for commercial purpose. The owners of such permitted pets shall confine or control them in a manner such that they will not be a nuisance to other Owners.

H. **Outside Burning.** No trash, leaves, or other materials shall be burned outdoors upon a Lot or in any Common Area. The foregoing notwithstanding, outdoor fireplaces or fire pits designed and used for burning of firewood may be permitted at the discretion of and subject to approval of the Architectural Review Board.

I. **Antennas and Receivers.** No satellite receiver, down-link or exterior antenna shall be permitted on any Lot without the prior written consent of the Architectural Review Board as to
the size and location of such antenna. The Architectural Review Board shall not be obligated to
give its consent to the installation of any exterior television antenna if television reception is
available from underground cable connections serving the Lot, nor shall the Architectural
Review Board be required to approve the installation of any exterior antenna if all Owners of
Lots within two hundred (200) feet of the Lot upon which the proposed antenna would be erected
do not consent in writing to the installation thereof. Notwithstanding the foregoing, the
Architectural Review Board may not approve any satellite dish with a diameter greater than
twenty (20) inches.

J. **Exterior Lights.** No exterior lights shall be erected or maintained on a Lot so as to shine
or reflect directly upon another Lot or other adjoining properties.

K. **Electric Bug Killers.** No electric bug killers, “zappers” and other similar devices shall be
installed on the Property.

L. **Outdoor Equipment.** No awnings shall be placed on any Residence and no flagpoles,
statues, yard ornaments, outdoor recreational equipment or facilities (including basketball goals
and swingsets and similar child play equipment) shall be placed or maintained on any Lot
without the approval of the Architectural Review Board as to size, type, location, and
construction materials and methods of such facilities.

M. **Garage Doors.** All garage doors shall remain fully lowered and closed except when in
use for ingress and egress to the garage.

N. **Irrigation Systems. Periodic Watering of Lawns.** Each Owner shall be responsible for
the cost of water usage and for any repairs to the irrigation system on the Lot. Each Lot owner
shall water the lawn area of the Lot on a regular basis sufficient to maintain a lush green yard. If
an Owner fails to comply with this restriction, the Association shall have the right to water the
lawn at the expense of the Owner thereof and the Association shall have a lien against the
watered Lot for the expense thereof. The Owners of Lots 9, 19 and 37 shall be responsible for
the cost of water and electricity used in the irrigation of the center islands of the cul-de-sacs on
which said lots are located. The Association shall be responsible for maintenance and repair of
that portion of the Irrigation Systems serving those islands

O. **Tree Maintenance, Removal, Replacement.** For a period of not less than one (1) year
from the date of installation, Declarant shall replace any trees which were installed by Declarant
and which die during such one (1) year period. Except for Declarant’s responsibility for
replacement specified above, and subject to any maintenance responsibility which may be
assumed by the Association as part of the Lot Maintenance Services, the Owner of a Lot shall be
responsible for maintaining and replacing installed Trees. Any Installed Tree which requires replacement shall be replaced with a tree of the same species (or other species as may be approved by the Architectural Review Board) and of a size which is the lesser of 1) the size of the tree being replaced or 2) eight (8) feet in height for evergreen trees and four (4) inches in trunk diameter for deciduous trees. All trees shall be maintained free of disease and shall be properly and regularly pruned and fertilized so as to maintain the trees in a healthy, attractive condition. In the event that an Owner fails to maintain or replace trees as provided herein, the Association may perform such replacement or maintenance as necessary and the cost of such shall become a lien against the Lot and collectible as a Special Assessment to the Lot. The Lot Owner shall notify the Architectural Review Board in writing and obtain its approval prior to the removal or replacement of 1) any Installed Trees or 2) any tree with a trunk diameter greater than six (6) inches or greater than two (2) inches for trees within twenty-five (25) feet of the perimeter of the Property.

P. **Drainage.** Declarant or the Association may, but shall not be obligated to, petition the Drainage Board to accept some or all of the Drainage System for maintenance as a legal drain. In such event, each Lot in Buttdown Farm will be subject to assessment by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the detention ponds included in such legal drain, which assessment will be a lien against the Lot. To the extent not maintained by the Drainage Board or other governmental authorities, the Drainage Easements reserved as surface drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. To the extent not maintained by the Drainage Board or other governmental authorities, any Drainage Easements and/or components of the Drainage System located in the Common Areas and any underground components of the Drainage System located within the Subdivision shall be maintained by the Association and the costs thereof shall be assessed to the members.

**ARTICLE IV**

**DECLARANT**

A. **Duties of Declarant.** Declarant shall, upon the sale of any Lot in a Section, be obligated to complete the installation and construction of the Subdivision and Common Facilities necessary to serve such section in substantial conformity with the Subdivision Development Plan as such may be amended from time to time (and, as required, approved by any governmental authorities). Until such time as the Association has been organized and assumes its duties as provided in this Declaration, Declarant shall perform all duties of the Association, including, but not limited to maintenance of the Common Facilities. Declarant shall also maintain all Lots owned by Declarant in a clean and sightly condition.
B. **Powers of Declarant.** Until such time as the Association has been organized and assumes management of the Subdivision, Declarant shall have all powers granted to the Association herein, including, but not limited to, enforcement of the provisions of this Declaration, architectural review and imposition and collection of Assessments. If Declarant imposes and collects Assessments from the Owners, Declarant shall utilize such sums only to defray the cost and expense associated with the duties imposed upon the Association pursuant to paragraphs E and F of Article V. Declarant will provide annual accountings to the Owners, and all sums then held by the Declarant from collections from the Owners shall be delivered to the Association, together with a full accounting certified by the Declarant, upon the formation of the Association.

C. **Formation of the Association.** Declarant may form the Association at any time following the recording of this Declaration by filing Articles of Incorporation therefor with the Secretary of State of Indiana. The members of the initial Board of Directors of the Association shall be selected by Declarant. The terms and provisions of the Articles of Incorporation and Bylaws of the Association shall be consistent with the terms and provisions set forth in this Declaration. Notwithstanding anything herein to the contrary, the Association shall be formed by the Declarant, if not already formed, upon the sale of seventy-five percent (75%) of the Lots in the Subdivision to Owners other than Declarant or Builders.

D. **Declarant’s Use of the Property During Construction.** Notwithstanding any provisions to the contrary contained herein or any other instrument or agreement, Declarant, its sales agents or contractor may maintain during the period of construction and sale of Lots and Residences in the Property, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the development, construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

E. **Non-Liability of Declarant.** Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the contractor of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to have agreed to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over or under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.
ARTICLE V
BUTTONDOWN FARM HOMEOWNERS ASSOCIATION, INC.

A. Membership. Each Owner shall automatically be a member of Buttondown Farm Homeowners Association, Inc., an Indiana nonprofit corporation and shall enjoy the privileges and be bound by the obligations contained in this Declaration, the Articles and the Bylaws. An Owner shall automatically be a member of the Association, whether or not the Association is formed at the time such Owner takes title to his, her or its Lot. If the Association is formed after an Owner takes record title to a Lot, then such Owner shall automatically become a member of the Association upon its formation. If a Person should realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration, the Articles and the Bylaws on Owners, including those provisions with respect to the payment of Assessments.

B. Classes of Members. The Association shall have three (3) classes of members as follows:

1. Class A. Every Person who is an Owner of a Lot in Section 1 shall be a Class A member.

2. Class B. Every Person who is an Owner of a Lot in Section 2 shall be a Class B member.

2. Class C. Declarant shall be a Class C member. No other person, except a successor to substantially all of the interest of Declarant in the Subdivision, shall hold a Class C membership in the Association. The Class C membership shall terminate upon the earlier of a) resignation of the Class C member, b) when all of the Lots in the Subdivision have been sold, or c) on December 31, 2005.

C. Voting and Other Rights of Members. The voting and other rights of members shall be as specified in the Articles and Bylaws, provided that Class A and Class B members shall have one (1) vote for each Lot owned by such member and the Class C member shall have three (3) votes for each Lot owned by the Class C member.

D. Powers. The Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

E. Reserve for Replacements. The Board of Directors shall establish and maintain a Reserve for Replacements by the allocation and payment to such reserve fund of an amount
determined annually by the Board of Directors to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Facilities. In determining the amount, the Board of Directors shall take into consideration the expected useful life of the Common Facilities, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board of Directors may employ. Reserves for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or investments which are fully guaranteed as to principal by, the United States of America.

F. **Duties of Association.** To the extent such services are not provided by Declarant or the Town or other governmental agency, the Association shall 1) maintain the Common Facilities in a first class manner and provide for repair and replacement of the same as is reasonably necessary to maintain the full use and benefit of such Common Facilities by all Owners and 2) provide and administer Lot Maintenance Services as may be established and altered as provided herein.

G. **Lot Maintenance Services.** The scope of and budget for Lot Maintenance Services shall be established by Declarant for each Section prior to the first sale of a Lot within a Section to an Owner other than Declarant. Lot Maintenance Services shall be provided uniformly to the Lots within a Section but need not necessarily be uniform as between the two (2) Sections, i.e., the scope of Lot Maintenance Services provided by the Association to the Lots in Section 1 do not have to be the same as the scope of services provided to Lots in Section 2. The scope of Lot Maintenance Services for a Section may be changed upon approval of the Class C Member and two thirds (2/3) of the members who are Owners of Lots within that Section.

H. **Limitations on Action by the Association.** Unless i) the Class C Member and ii) at least three-fourths (3/4) of the Mortgagees (based on one vote for each first mortgage owned) or three-fourths (3/4) of the Class A and Class B members (other than Declarant) have given their prior written approval, the Association, the Board of Directors and the Owners may not: 1) except as authorized by paragraph A of Article VIII, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer for the purposes of this clause); 2) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs); 3) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the Common Area; 4) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior
appearance of Residences, or the maintenance and up-keep of the Common Area; or 5) fail to maintain a Reserve for Replacements in the amount required by this Declaration.

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

J. **Termination of Class C Membership.** Wherever in this Declaration the consent, approval or vote of the Class C member is required, such requirement shall cease at such time as the Class C membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in this Declaration.

**ARTICLE VI**

**ASSESSMENTS**

A. **Creation of Lien and Personal Obligation of Assessments.** Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (or Declarant pursuant to subparagraph IV.B. above) the following: 1) General Assessments; 2) Landscape Assessments, if applicable, and 3) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All assessments, together with interest thereon and costs of collection thereof, including without limitation, reasonable attorneys' fees and costs of litigation, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is charged. All Assessments together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.
B. General Assessment.

1. Purpose of Assessment. The General Assessment levied by the Association or the Declarant, as the case may be, shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots, for the improvement, maintenance and operation of the Common Facilities and the performance of the duties and responsibilities of the Association established by this Declaration.

2. Basis for Assessment.

   a) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to the size of the Lot.

   b) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Association except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in subsection a) above.

   c) Change in Basis. The basis of assessment for General Assessments may be changed with the assent of (i) the Class C Member and (ii) three-fourths (3/4) of the Class A and Class B Members collectively (excluding Declarant) or three-fourths (3/4) of the Mortgagees (based on one vote each first mortgage owner) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

3. Method of Assessment. The Declarant, or the Board of Directors by a majority vote of the Directors, shall, on the basis specified in subparagraph B.2 of this Article VI, fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Declarant or Board of Directors, as the case may be, shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid. The foregoing notwithstanding, until December 31, 2000, the uniform rate of the General Assessment shall be no greater than fifty dollars ($50.00) per month for each Lot payable in advance on the first day of each month, beginning May 1, 1999.

C. Landscape Assessment.

1. Purpose of Assessment. The Landscape Assessment levied by the Association shall be used exclusively to provide for the Lot Maintenance Services.
2. **Basis for Assessment.**

a) **Lots Generally.** Each Lot owned by a Person on which a Residence has been constructed shall be assessed at a uniform rate within a Section based upon the size of each Lot or by such other method or combination of methods which for each individual service provided, may more reasonably and fairly apportion the cost of such services to the Lot Owners.

b) **Lots Owned by Declarant and Builder.** No Lot owned by Declarant or a Builder shall be subject to a Landscape Assessment except such Lots as have been improved by the construction thereon of Residences which shall be subject to a Landscape Assessment as provided in subsection a) above.

c) **Change in Basis.** The basis of assessment for Landscape Assessments may be changed with respect to the Lot Maintenance services provided within a Section with the assent of i) the Class C Member and ii) two-thirds (2/3) of the Class of members (excluding Declarant) affected by such change or two-thirds (2/3) of the votes of all of the Mortgagees holding first mortgages on Lots upon which Residences have been built in the Section affected by such change and which are not owned by Declarant (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

3. **Method of Assessment.** By vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph C.2 of this Article VI, fix the Landscape Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board of Directors shall establish the date(s) the Landscape Assessment shall become due, and the manner in which it shall be paid. The foregoing notwithstanding, until December 31, 2000, the uniform rate of the Landscape Assessment shall be no greater than one hundred fifty and 00/100 dollars ($150.00) per month per Lot for Lots in Section 1 and twenty five and 00/100 dollars ($25.00) for Lots in Section 2, payable in advance on the first day of each month, beginning May 1, 1999.

D. **Special Assessment.** In addition to such other Assessments as may be authorized herein, the Association may levy in any fiscal year one (1) or more Special Assessments applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement
to the Common Facilities, including fixtures and personal property relating thereto, provided that
any such Special Assessment shall have the assent of the Class C member and of a majority of
the votes of the Class A and Class B members whose Lots are subject to assessment with respect
to the capital improvement who are voting in person or by proxy at a meeting of such members
duly called for this purpose.

E. **Date of Commencement of General Assessments and Landscape Assessments.** The
General Assessment shall commence with respect to assessable Lots on the first day of the month
following conveyance of the Lot to an Owner who is not Declarant. The Landscape Assessment
shall commence with respect to assessable Lots within a Section on the first day of the month
following substantial completion of the Residence on the Lot. Declarant may require
prepayment of General Assessments at the Closing of the sale of a Lot from Declarant to an
Owner other than Declarant. Such prepayment shall not exceed six (6) months of Assessments.

F. **Effect of Nonpayment of Assessments: Remedies of the Association.** Any Assessment
not paid within thirty (30) days after the due date may, upon resolution of the Declarant or the
Board of Directors, as the case may be, bear interest from the due date at a percentage rate no
greater than the current statutory maximum annual interest rate, to be set by the Declarant or the
Board of Directors for each assessment year. The Association shall be entitled to institute in any
court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any
expenses or costs, including reasonable attorneys’ fees, incurred by the Association in collecting
such Assessment. If the Association has provided for collection of any Special Assessment in
installments, upon default in the payment of any one or more installments, the Association may
accelerate payment and declare the entire balance of said Special Assessment due and payable in
full. No Owner may waive or otherwise escape liability for the Assessments provided for herein
by non-use of the Common Facilities or abandonment of his Lot.

G. **Subordination of the Lien to Mortgages.** The lien of the Assessments provided for
herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such
Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental
taxing or assessing authority. Sale or transfer of any Lot shall not affect the Assessment lien.
The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof
shall, however, extinguish the lien of such Assessment as to payments which became due more
than six (6) months prior to such sale or transfer. No such foreclosure sale or transfer shall
relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

H. **Certificates.** The Association shall, upon request by an Owner, at any time, furnish a
certificate in writing signed by an officer of the Association that the Assessments on the
requesting Owner's Lot have been paid or that certain Assessments remain unpaid, as the case may be. Such certificate shall be conclusive evidence of payment to the Association of such assessments therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

I. **Annual Budget.** By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. At the election of the Declarant or the Board of Directors, as the case may be, any Assessments imposed pursuant to this Declaration may be paid in monthly, quarterly, semi-annual or other periodic installments.

**ARTICLE VII**

**ARCHITECTURAL CONTROL**

A. **The Architectural Review Board.** An Architectural Review Board consisting of three (3) or more persons as provided in the Bylaws shall be appointed by the Class C member. At such time as there is no Class C member, the Architectural Review Board shall be appointed by the Board of Directors. The Architectural Review Board shall be a standing committee of the Association.

B. **Purpose.** The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of Residences, landscaping and other improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography of the Property.

C. **Conditions.** Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan for such Lot. Prior to the commencement by any Owner other than Declarant of 1) excavation, clearing, grading or other building preparation work, 2) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or 3) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board for approval. No building, fence, wall, Residence or other structure shall be commenced, erected, maintained, improved, altered, made or done, any excavation, clearing or grading commenced or any plantings made, by a person other than Declarant without the prior written approval of the
Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Subdivision, and no Owner shall undertake any construction activity within the Subdivision unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this paragraph C, "plantings" do not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

D. **Procedures.** In the event the Architectural Review Board fails to approve, modify or disapprove a complete Lot Development Plan in writing within thirty (30) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by the Association, approval will be deemed approved. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may, but shall not be obligated to, approve, disapprove or otherwise act on individual components of a Lot Development Plan if an incomplete submission is made by an Owner.

E. **Guidelines and Standards.** The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in paragraph B of this Article VII to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

F. **Application of Guidelines and Standards.** The Architectural Review Board shall apply the guidelines and standards established pursuant to paragraph E of this Article VII in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

Notwithstanding the foregoing, the Architectural Review Board may authorize variances from compliance with any of its guidelines and standards when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require,
but only in accordance with duly adopted rules and regulations promulgated by the Architectural Review Board. Such variance may only be granted, however, when unique circumstances dictate and no variance shall a) be effective unless in writing, b) be contrary to the Restrictions set forth elsewhere herein or in the Plat, or c) estop the Architectural Review Board from denying a variance in other circumstances. For purposes of this paragraph, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

G. **Design Consultants:** The Architectural Review Board may utilize the services of architectural and engineering professionals and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of a conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

H. **Exercise of Discretion.** Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of paragraph F of this Article VII, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Architectural Review Board, could only conclude that such determination constituted an abuse of discretion.

**ARTICLE VIII**

**COMMON AREA**

A. **Ownership.** The Common Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Common Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Common Area. Declarant or the Association may, however, dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

B. **Density of Use.** Declarant expressly disclaims any warranties or representations regarding the density of use of the Common Area or any facilities located thereon.
C. **Obligations of the Association.** The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair.

Neither Declarant nor the Association shall be liable for any injury or damage to any person or property caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or the Declarant, becoming out of repair. The Association or Declarant shall not be liable to any Owner for loss or damage, by theft otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Area.

No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Declarant, as the case may be, to take some action or to perform some function required to be taken or performed by the Association or Declarant under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or Declarant, as the case may be, or from any action taken by the Association to comply with any law, ordinance, code, statute, rule, regulation or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

D. **Easements of Enjoyment.** No person shall have any right or easement of enjoyment in or to the Common Area except to the extent granted by, and subject to the terms and provisions of, this Declaration. Such rights and easements which are so granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.

E. **Extent of Easements.** The easements of enjoyment created hereby shall be subject to the following:

1. the right of the Association to establish reasonable rules for the use of the Common Area;

2. the rights of the Association to suspend the right of an Owner and all Persons whose right to use the Common Area derives from such Owner’s ownership of a Lot to use such portions of the Common Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;
3. the right of the Association to suspend the right of an Owner or any Person claiming through the Owner to use the Common Area for a period not to exceed sixty (60) days for any other infraction of this Declaration or the Rules and Regulations;

4. the right of the Association to mortgage any or all of the Common Area and the facilities constructed therein for the purposes of improvements to or repair of, the Common Area or facilities constructed thereon, pursuant to approval of a) the Class C member and b) two-thirds (2/3) of the votes of the Class A and Class B members collectively (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Association or a meeting duly called for this purpose; and

5. the right of the Association or Declarant to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility.

F. Additional Rights of Use. The members of the family, tenants and guests of every Owner who has a right of enjoyment to the Common Area and facilities shall also be entitled to use of the Common Area. Such use shall be subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Association and included within the Rules and Regulations.

G. Damage or Destruction by Owner. In the event the Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Association to repair said damaged area. The Association shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

H. Conveyance of Title. Declarant may retain the legal title to the Common Area or any portion thereof until such time as it has completed improvements thereon but notwithstanding any provision herein, the Common Area shall be conveyed to the Association not later than sixty (60) days after the Association is formed. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Common Area prior to conveyance to the Association.

I. Lakes and Ponds. All lakes, ponds and streams within the Property, if any, shall be aesthetic amenities and/or used in connection with the Drainage System only, and no other use
thereof, including without limitation, fishing, swimming, boating, wading, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. Neither the Declarant nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Property.

ARTICLE IX
EASEMENTS

A. **Plat Easements.** In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Boone County, Indiana, Lots are subject to drainage easements, utility easements, and Common Area easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Declarant, Owners, the Association, the Architectural Review Board, public utility companies and governmental agencies as follows:

1) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the surface drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the flow. Said areas are subject to construction or reconstruction to any extent necessary to maintain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Association or Architectural Review Board, but neither Declarant nor the Association and Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

2) Utility Easements (UE) are created for the use of Declarant, the Association and all public utility companies, not including transportation companies, for the installation and maintenance of sewers, mains, ducts, poles, lines, wires, or other utility equipment or facilities.

3) Common Area Easements (CAE) are created for the use of Declarant, the Architectural Review Board and the Association for the purpose of gaining access to the Common Area in the course of installation of Common Facilities thereon and use, maintenance, repair or replacement thereof.
All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Boone County, but a concrete driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant or pursuant to the terms hereof (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

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

C. **Public Health and Safety Easements.** An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Person to enter upon the Common Area in the performance of their duties.

D. **Drainage Board Easement.** An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain which may be established constituting a part of the Drainage System.
E. **Landscape Easement.** A blanket easement is hereby created for the benefit of and granted to Declarant and the Association over and across all of the Lots for the purpose of entering upon the Lots to perform the Lot Maintenance Services.

F. **Association Easement.** An easement is hereby created for the benefit of, and granted to Declarant and the Association over and across the Property as necessary to carry out their duties and responsibilities created hereunder.

G. **Crossing Underground Easements.** Easements utilized for underground service may be crossed by driveways, walkways, and Common Area Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossings, driveways, walkways, or Common Area Easements, and neither Declarant, the Association nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or services to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

H. **Declarant’s Easement to Correct Drainage.** For a period of ten (10) years from the date of conveyance of the first Lot in a Section, Declarant reserves for itself and the Association a blanket easement and right on, over or under the ground within that Section to maintain and to correct drainage of surface water in order to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant or the Association, as the case may be, shall restore the affected property to its original condition as nearly as practicable. Declarant or the Association, as the case may be, shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant or the Board of Directors an emergency exists which precludes such notice.

I. **Water Retention.** The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (retention) of storm water within the drainage easements (DE) on such Owner’s Lot.

J. **Street Lights.** The Owner of each Lot on which a street light is installed by Declarant consents to the placement of a street light on such Lot and agrees that the Association or the public utility maintaining such lights shall have the right to enter upon the Lot for the purpose of maintaining the street light.
ARTICLE X
ENFORCEMENT

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

ARTICLE XI
LIMITATIONS ON RIGHTS OF THE ASSOCIATION

As long as there is a Class C member, the Association may not use its resources nor take a public position in opposition to the Subdivision Development Plan or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf, of the Association.

ARTICLE XII
APPROVALS BY DECLARANT

As long as there is a Class C member, the following actions shall require the prior approval of Declarant: dedications of Sections within the Property or of the Property with other real estate; mortgaging of the Common Area; amendment of this Declaration; and changes in the basis for Assessments or the amount, use and time of payment of Assessments.

ARTICLE XIII
MORTGAGES

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

B. **Notices to Mortgagees.** The Association shall promptly provide to any Mortgagee, the existence and address of which the Association has been advised under paragraph A of this Article XIII, notice of any of the following:

1. any condemnation or casualty loss that affects a material portion of the Common Area;

2. any delinquency in the payment of any Assessment owned by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

3. Any proposed action that requires the consent of a specified percentage of Mortgagees; and

4. Any proposed amendment of the Organizational Documents effecting a change in a) the interests in the Common Area pertaining to any Residence or the liability for Maintenance Costs pertaining thereto, b) the vote pertaining to a Residence or c) the purposes for which any Residence or the Common Area are restricted.

C. **Notice of Unpaid Assessment.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.
D. **Financial Statement.** Upon the request of any Mortgagee, the Association shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association.

E. **Payments by Mortgagees.** Any Mortgagee may 1) pay taxes or other charges that are in default and that may or have become a lien upon the Common Area or any part thereof and 2) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Association.

**ARTICLE XIV
AMENDMENTS**

A. **Generally.** This Declaration may be amended at any time by an instrument signed by 1) the appropriate officers of the Association acting pursuant to the authority granted by not less than three-fourths (3/4) of the votes of the Class A and Class B members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required therein or 2) Declarant, subject to the provisions of paragraph B of this Article XIV.

B. **By Declarant.** Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 1999. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Boone County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights or interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized herein, Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

C. **Effective Date.** Any amendment shall become effective upon its recordation in the Office of the Recorder of Boone County, Indiana.

**ARTICLE XV
INTERPRETATION**

The underlined titles preceding the various Articles, paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the
singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

ARTICLE XVI
DURATION

The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2019, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Property.

ARTICLE XVII
SEVERABILITY

Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other of the Restrictions.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

BUTTONDOWN FARM, LLC

By: ________
R. Stanton Evans, Member
STATE OF INDIANA 
) 
) SS: 
COUNTY OF Marion 
)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared R. Stanton Evans, a member of Buttondown Farm, LLC, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 1st day of March, 1998.

Amy L. Cunningham
Notary Public
Printed Name

My commission expires:
8/31/2000

County of Residence:
Marion

This document was prepared by Donald R. Russel, Esq., Hall, Render, Killian, Heath & Lyman, P.S.C., One American Square, Suite 2000, Indianapolis, Indiana 46282
LEGAL DESCRIPTION

A part of the Southeast Quarter of the Southeast Quarter of Section 27, and a part of the Southwest Quarter of Section 26, all in Township 18 North, Range 2 East, Boone County, Indiana, more particularly described as follows: Commencing at the southwest corner of the Southeast Quarter of the Southeast Quarter of said Section 27; thence North 00 degrees 26 minutes 25 seconds East 663.53 feet along the west line of said quarter-quarter section to the northwest corner of Colony Woods Section Five, the plat of which is recorded in Plat Book 6, page 21, in the Office of the Recorder of Boone County, said corner being the POINT OF BEGINNING of this description; thence North 00 degrees 26 minutes 25 seconds East 301.68 feet along said west line to the southwest corner of that parcel of land described in the Warranty Deed to Michael T. and Linda K. Walsh recorded in Deed Record 228, page 512, in said Recorder's office, said corner being South 00 degrees 26 minutes 25 seconds West 356.48 feet, measured along said west line, from the northwest corner of said quarter-quarter section; thence North 89 degrees 47 minutes 19 seconds East 787.48 feet along the south line of said Walsh land and along the south line of that parcel of land described in the Quitclaim Deed to Walsh recorded in Deed Record 229, page 862, in said Recorder's office, to the southeast corner of said Walsh land; thence North 00 degrees 44 minutes 31 seconds East 356.48 feet along the east line of said Walsh land to the northeast corner of said Walsh land, said corner coinciding with the north line of said quarter-quarter section; thence North 89 degrees 47 minutes 19 seconds East 548.74 feet along said north line to the northeast corner of said quarter-quarter section, said corner being South 00 degrees 35 minutes 16 seconds East 1,323.43 feet, measured along the east line of the Southeast Quarter of said Section 27, from the northeast corner of said quarter section, and North 00 degrees 35 minutes 16 seconds West 1,323.43 feet, measured along said east line, from the northeast corner of said quarter section; thence North 89 degrees 14 minutes 12 seconds East 426.09 feet along the north line of the Southwest Quarter of the Southwest Quarter of said Section 26 to a point on the northern line of the abandoned right-of-way of the C.C.C. & St. Louis Railroad, as distinguished from the abandoned right-of-way of the T.H.I. & E. Traction Line, said point being South 89 degrees 14 minutes 12 seconds West 910.70 feet, measured along the north line of said quarter-quarter section, from the northeast corner of said quarter-quarter section; thence South 67 degrees 18 minutes 03 seconds East 136.09 feet along the northern line of said abandoned right-of-way; thence South 60 degrees 55 minutes 25 seconds East 201.27 feet along said northern line; thence South 53 degrees 18 minutes 32 seconds East 866.74 feet along said northern line to the prolonged north line of Colony Woods Section Three, the plat of which is recorded in Plat Book 6, page 9, in said Recorder's office; thence South 89 degrees 57 minutes 37 seconds West 1,417.57 feet along said prolonged north line and along said north line and along the north line of said Colony Woods Section Five to the east line of the Southeast Quarter of said Section 27; thence South 89 degrees 58 minutes 09 seconds West 1,350.11 feet (1,382.54 feet by plat) along said north line to the point of beginning and containing 28.566 acres, more or less.