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MULBERRY FARMS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made this 12th day of **January, 1998**, by **Springmill Properties, LLC**(hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner of or has control of all the land contained in the area shown on **Exhibit "A"**, attached hereto and made a part hereof, which lands will be subdivided and shall be known *as* ***Mulberry Farms*** *(hereinafter referred to as the "Development"), and* will be more particularly described on the plat thereof which will be recorded in the office of the **Recorder of Hamilton County, Indiana**; and,

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

NOW, THEREFORE, the Declarant hereby declares that all of the platted lots and lands located within the development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having an interest in and to the real property or any part or parts thereof subject to such Restrictions, and shall insure to the benefit of the Declarant and every one of the Declarant's successors in title to any real estate in the Development. The Declarant specifically reserves unto itself the right and privilege, to exclude any real estate so shown from the Development, or to include any additional contiguous real estate in the Development.

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

A. "Association" shall mean the **Mulberry Farms Homeowners Association, Inc.**, a not-for-profit corporation, the membership and power of which are more fully described in paragraph 9 of this Declaration.

B. "Board" or "Board of Directors" shall mean the Board of Directors of the **Mulberry Farms Homeowners Association, Inc.**

C. "Common Area" shall mean those areas of current and future plats plus any other areas designated by the Declarant for the common use and enjoyment of the residents of the **Mulberry Farms** Development, which are more fully described in paragraph 8 of this Declaration.

D. "Committee" shall mean the **Mulberry Farms Architectural Control Committee**, as more fully described in paragraph 6 of this Declaration.

E. "Development Period" shall mean the period prior to development and to when development of all lots have been completed and Class B membership of the Association has been terminated by the Declarant and no longer exists.

F. "Lot" shall mean any parcel of residential real estate described by the plat of the Development that is recorded in the office of the **Recorder of Hamilton County, Indiana**.

G. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

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

I. "Residence" means any structure intended exclusively for occupancy by single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential lot.

J. "Town" shall mean **Town of Westfield, Hamilton** County, IN.

K. "Tract" mean the land described in **Exhibit "A"** and such other real estate as may from time to time be annexed thereto according to the provisions of Paragraph 28 hereof.

2. CHARACTER OF THE DEVELOPMENT

A. In General. Every numbered lot platted as a part of the Development is for residential purposes and must conform to the Commitments of zoning of the real estate made in connection with the **Town of Westfield Plan Commission**. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plat shall be used in a manner determined by the Declarant. However, the Declarant reserves unto itself the right to change the character of such designated use at any time in the future by applying to the **Town of Westfield Plan Commission** and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Declarant's planned use.

B. Additions to the Development. Declarant shall have the right to bring within the scheme of this Declaration and add to the Development real estate that is contiguous to the Development. In determining contiguity, public rights of way shall be excluded. The additions authorized under this Paragraph shall be made by filing of record of one or more Supplemental Declarations with respect to the additional real estate. For purposes of this Paragraph a Plat depicting a portion of the Development Area shall be deemed a Supplementary Declaration.

C. Occupancy or Residential Use of Partially Completed Home Prohibited. No home constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions, and limitations of record appearing on the recorded plat and amendments thereto of the subdivision, on recorded easements, rights-of-way, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

E. General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility, drainage and service lines and systems, including but not limited to: water, sewers, gas, telephones, electricity, television, cable or communication lines and systems, landscaping, lighting and irrigation (if any). 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 Tract and to excavate for such purposes if Declarant or such company to restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, waterlines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and/or approved by Declarant, or by the Association thereafter. Should any utility furnishing a service covered by the general easement herein provided requisite a specific easement by separate recordable document, Declarant or thereafter the Association shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT, MATERIALS AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwelling units constructed on all Lots shall be **one thousand three hundred (1300)** finished square feet for single-story dwelling unit; and **one thousand six hundred (1600)** square feet for dwelling units exceeding single story, (provided that such dwelling units shall contain a minimum of **eight hundred (800)** finished square feet on the first floor and a minimum of **four hundred (400)** finished square feet of living space on the second floor of such unit, with an aggregate total of **one thousand six hundred (1600)** finished square feet). In any event, the finished square footage calculation of living space of a dwelling unit shall not include porches, terraces, garages, basements, or any area below ground level.

B. No Storage Sheds. Not withstanding anything contained herein or in the Articles or By-Laws to the contrary, and in addition to all restrictions set forth in the Plat of the Development, any and all forms of outbuilding, shed, storage shed, animal quarters, etc., which are intended to not be directly connected to the main house on any Lot are hereby strictly prohibited.

C. Mailboxes. All mailboxes and posts must be approved by the Declarant, or thereafter, the Committee and shall be standard as to size, location, post, design, height, material, composition and colors. The builder upon the initial Lot closing to the homeowner shall install the initial mailbox for each lot, which meets the above criteria. The homeowner and association member agrees to maintain and keep painted appropriately said mailbox and post to be in conformance with all other mailboxes.

D. Fences. The Committee prior to any installation must approve any fencing and landscape screening. It is the goal of the Declarant to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee when reviewing fences for approval. No front yard fencing is permitted. If approved by the Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Committee. Non-professionally installed fences may be inspected by the Committee after completion in order to ensure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences shall be kept in good repair.

(i) Height Restriction.

Fences shall not exceed **six (6') feet** in height except as further restricted hereafter and which otherwise meet these guidelines.

(a) Lot fencing and walls above grade shall not exceed **six (6') feet** above grade.

(b) Patio screens/privacy fences shall not exceed **six (6) feet** in height adjoining the rear of home.

(c) No fence placed on a lot in the Development abutting a lake shall exceed **forty two (42)** inches in height beyond a point sixteen (16) feet from the rear of house constructed on such lot. However, this restriction may be waived by the Committee to enclose an in ground pool.

(d) The Declarant, or thereafter, the Committee may amend or change, any of the above restrictions.

(ii) Materials and Finish.

(a) Fences are to be wood, dog-eared shadowbox style with 1" x 6" vertical boards and are to remain unpainted. The Committee must approve all fencing materials, design, and location.

(b) The Committee may permit the installation of a vinyl coated chain link fence when a lot is adjacent to woods and or a lake. This exception applies only to the rear lot line of property.

(c) Walls above grade must be constructed of natural stone, masonry or shadowbox fencing.

(d) The Committee will approve landscape screening materials, design, and location on an individual basis.

(iii) Approval.

The exact location, material, color and height of the fence and picture shall be submitted to the Committee for written approval 30 days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered **DENIED**.

E. Sidewalks. Each home shall have a continuous 4-foot wide by a minimum of **four (4")**inches thick concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalk shall be installed by the builder and included in the purchase price of the home sale. The Declarant shall install and pay the cost for sidewalks as shown on the Plat within Common Areas. If the home is completed in the winter then the sidewalks shall be installed no later than April 30th of the following spring.

F. HVAC Units. No heat pumps, air conditioning units or gas meters will be installed on the front of the house.

G. Windows-Doors. If storm doors are installed, they must be painted to match exterior of the home. No unfinished aluminum doors or windows will be allowed.

H. Vents. All metal and PVC roof or range vents will be painted to blend with roof color. Each builder must make every effort to locate such roof vents to the rear of the house.

I. Plumbing. All plumbing vent stacks to be on rear of house.

J. Awnings. No metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted in the Development.

K. Swimming Pools. Only permanent, in-ground pools with professional construction may be approved by the Committee. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to committee and association approvals. See fencing Section 3D for further details.

L. Tennis Courts, Racquetball Courts, PaddleBall Courts, etc. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted without approval from the Committee. Lighted courts are prohibited.

M. Miscellaneous. No clotheslines or flagpoles may be erected on any lot.

N. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of 18 inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided such equipment is not more than eight (8) feet high (to the highest point of the structure) and maintained by the lot owner in good repair (including painting). Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee. Basketball goals may be installed on a lot adjacent to driveway without Committee approval provided that they have white fiberglass or translucent fiberglass or glass backboards. Independent basketball courts may not be constructed on a lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from the home or garage.

O. Garages and Driveways. All residential dwellings in the Development shall include at least a two car enclosed garage. Detached garages are not permitted. All driveways shall be constructed of concrete and be a minimum of fourteen (14') feet wide.

P. Dusk-To-Dawn Lighting. Each lot shall maintain and operate at least two (2) continuous dusk-to-dawn lights to be controlled by a photocell, in lieu of Public Street lighting, to be installed by the builder on each side of the garage doors. Yard pole lights or high intensity up lighting of homes (except models) shall not be permitted.

Q. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

R. Prohibition of Used Structures. All structures constructed or placed on any lot in the Development shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such lot.

S. Sump Pump Discharges. Builder in areas where the Developer provided subsurface drains or storm sewers shall connect all sump pump discharge lines to underground subsurface drains or storm sewers.

T. Maintenance of Lots and Improvements. The Owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the esthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.

U. Association's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost incurred by the Association shall be assessed to the lot owner. The Lot owner shall reimburse the Association within thirty (30) days of the date on which the Lot owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments as outlined hereafter in Section (10) of this Declaration. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

V. Lake and Lake Restrictions. Lot owners, whose lot extends to the lake(s), will have full responsibility of maintenance and upkeep of this area unless the lake is a designated "common area" on the recorded plat. There is to be no wading, swimming, skating, or boating on the lake(s). Any person utilizing a park located adjacent to a lake, does so at their sole risk.

Each Lot Owner abutting a lake or pond shall indemnify and hold harmless Declarant, Developer, Association, Committee, Board of Directors, and each other Owner against all loss or damage incurred as a result of injury to any Person, pet or damage to any property, or as a result of any other cause or thing, arising from or related to use of, access to, a Lake or Pond or Park, by any person who gains access thereto from, over or across such Owner's Lot, inclusive of damage from Lake chemicals used for algae containment, or other, or damage relating to any Lot or building resulting from damage from water or erosion.

4. PROVISIONS RESPECTING OF SANITARY SEWER EASEMENT.

No storm water (subsurface or surface) shall be discharged into sanitary sewers. No driveways, walks, patios, etc. shall be constructed within twelve (12") inches of any sanitary manhole.

5. GENERAL PROHIBITIONS.

A. Visual Obstructions No fence, wall, gate, hedge, tree or shrub planting which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and line connecting points twenty five (25) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line.

B. Nuisances. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that may be or may become an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

C. Exterior Antenna/Dishes. No television, radio or other antennas, nor any obtrusive object may be erected by any lot Owner on the exterior of a house or on a Lot. Satellite dishes of 24 inches in diameter or smaller may be permitted provided the installation location is approved by the Committee, but in no event will it be allowed on the front of the home, or permitted to be higher than the roof ridge.

D. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs, except with the approval of the Committee.

E. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of a dog(s) or viscous animal(s) shall constitute a nuisance and may be ordered removed from the Development by the Association.

F. Vehicles Parking. No trucks one (1) ton or larger in size, campers, trailer, motorhomes, boats, snowmobiles, jet ski or similar vehicles shall be parked on any street in the Development. Any recreational vehicle or trailer, camper, snowmobile, Jet Ski, or boat shall not be permitted to remain on any driveway or lot except within a closed garage and shall not be regularly parked upon unpaved areas. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or fuel tanks exposed.

G. Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse including compost on his lot except as may be permitted in subparagraph H below. All houses built in the Development shall be equipped with a garbage disposal unit provided by the homebuilder.

H. Fuel Tanks. External propane tanks, except portable tanks(less than five (5) gallons) for gas grills, shall not be permitted.

I. Model Homes. No owner of any lot in the Development shall build or permit the building upon a lot any dwelling house that is to be used as a model home without permission to do so from the Declarant.

J. Temporary Structures. No temporary house, trailer, garage or other outbuilding shall be placed or erected on any lot, with the exception of those facilities specifically for the purpose of sales and construction of homes by the Builder.

K. Solar Panels. No solar panels shall be permitted within the Development.

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

M. Home Occupations. No lot or lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No manufacture or assembly operations are conducted. In no event shall the following or similar activities be conducted: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities.

N. Open Drainage, Ditches and Swales.

(i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant. Property owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the lot owner.

(ii) Any property owner or builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Section 10 of this Declaration.

O. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

P. Wells and Septic Tanks. Water wells shall not be drilled on any of the lots except as required to irrigate common areas nor shall any septic tanks be installed on any of the lots in the Development.

Q. Roofing Materials. The roofing materials on all homes, specifically shingles, shall be conforming in quality, style, composite and similar color as described and approved by the Declarant and thereafter the Committee.

R. Exterior Design Variations. The builder(s) agrees not to build the exact same exterior elevation next door to each other in efforts to prevent clusters of 'look alike' home styles within the development.

6. ARCHITECTURAL CONTROLS.

A. Committee: Architectural Control Committee. An Architectural Control Committee, composed of three (3) members shall be appointed by the Declarant, and such members shall be subject to removal by the Declarant at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Association the power to appoint and remove one or more members of the Committee.

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

C. Generally. No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard basketball hard surfaced court, or improvement of any type or kind (including significant landscaping) shall be constructed or placed on any Lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall by accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of the improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn by a professional to a scale of 1" = 30', or to such other scale as the Committee shall deem appropriate.

D. Approvals. Approvals, determination, permissions, or consents required herein shall be deemed given if they are given in writing, signed, with respect to the Declarant or the Association by the President or a Vice President thereof, and with respect to the Committee, by one (1) member thereof.

E. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement.

(i) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of these Restrictions;

(ii) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(ii) The proposed improvement, or any part thereof, would in the sole opinion and absolute discretion of the Committee needs to conform to the interests, welfare or rights of all or any part of other Owners and the Declarant.

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

G. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered **DENIED**.

H. Liability of Committee, Declarant, Developer. Neither the Committee nor any agent thereof, nor the Declarant, or Developer, or Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it nor shall the Committee be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each lot prior to proposing construction.

I. Exercise of Discretion. Declarant intends that the members of the Architectural Control Committee exercise discretion in the performance of their duties consistent with the provisions hereof, 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 Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as defense, abuse of discretion may be established only if a Reasonable Person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

J. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these restrictions and applicable regulations.

K. Continuation of Committee. When the Declarant notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the actions of the Committee with like powers and duties.

7. CONTIGUOUS LOTS

A. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he must apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house. In addition, a land surveyor and engineer must present the plan to the Declarant and Association for written Board approval.

8. USE AND OWNERSHIP OF COMMON AREA.

A. Use. Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Association. Any Common Area depicted on the recorded plats of the Development or designated by the Declarant shall remain private, and neither the Declarant's execution or recording of the plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

B. Ownership. A license upon such terms and conditions as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association, provided, however, that no residential development shall occur in the Common Area. Ownership of any Common Area shall be conveyed in feel simple title, free of financial encumbrances to the Association prior to the end of the Development Period. Such conveyance shall be subject to easements and restriction of record, and such other conditions, as the Declarant may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Association.

9. **MULBERRY FARMS** HOMEOWNERS ASSOCIATION, INC.

A. Membership. Each lot owner shall be entitled and required to be a member of the Association and shall enjoy the privileges and be bound by the obligations contained herein and in the Articles and By-Laws of the Association. Each Lot Owner acknowledges the rights and powers of Declarant and of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors, and assigns, covenants, agrees, and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each lot affected by this Declaration, to keep observe, perform and comply with the terms and provisions of this Declaration.

If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

B. 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.

C. Classes of Members. The Association shall have two (2) classes of voting membership, Class A and B, as follows:

(i) Class A. Every person who is a Lot Owner shall be a Class A member, (with the exception of the Declarant, prior to the termination of Class B membership), and shall be entitled to One (1) vote for each lot owned (by recorded deed) with respect to each matter submitted to a vote of the members upon which Class A members are entitled to vote

(ii) Class B. The Declarant shall be a Class B member, and all successors and assigns of the Declarant designated only by the Declarant as Class B members by written notice delivered to the resident agent of the Association. Each Class B member shall be entitled to Five (5) votes for each lot owned by Declarant and Five (5)votes for each single numbered parcel of land shown upon and identified as a lot on any recorded plat of the Real Estate. No other Person, except a successor to substantially all of the interest of Declarant shall hold a Class B membership in the Association. The Class B membership shall cease and terminate upon the the first occurrence of; (a) the date upon which written resignation of the Class B member is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after ninety-five (95%) of the lots in the Property Area have been conveyed to Owners other than the Declarant; or (c) six (6) years after the date of recording of the first conveyance of a Lot to an owner other than Declarant(the applicable date being herein referred to as the "Applicable Date").

D. Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant and such consultants as the Board may employ.

E. Limitations on Action by the Association. Unless the Class B Member, Declarant, or in the event that Class B membership no longer exists, then, and at least two-thirds (2/3) of the Class A members, has given their prior written approval, the Association, the Board of Directors and the Owners may not:

(i) 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 transfer for the purposes of this clause);

(ii) 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 cost);

(iii) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the Common Area;

(iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence;

(v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Common Area;

(vi) fail to maintain the Reserve for Replacements in the amount; required by this Declaration.

F. Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B member is required, such requirement shall cease at such time as the Class B membership terminated, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 16 and 17.

10. ASSESSMENTS.

A. Creation of Lien and Personal Obligation of Assessments. Each Owner of any lot in the Development, except the Declarant and the builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

(i) One-Time assessment at closing by each home buyer, *including re-sales of homes;*

(ii) Annual assessments or charges;

(iii) Special assessments for: covenant enforcement, capital improvements and operation deficits, copies of Association documents if requested by a member; such assessments to be established and collected as hereinafter provided or established by the Board.

B. Collection. All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

C. One-Time Assessment. A one-time assessment of **$50.00** per lot is assessed by the Association to the initial homebuyer at closing.

D. Annual Dues/Assessment.

(i) Amount The annual assessment provided for herein shall be **$250.00** per calendar year and shall commence for each lot on the date of closing by the homeowner. Annual dues for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors; however, the initial due date for annual assessments shall be January 1st, and subject to collection and late charges beginning on January 31st.

(ii) Purpose of Assessments. The annual assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the owners of the Lots and for the improvement, maintenance and operation of the Common Area, plus other maintenance and services provided by the Association deemed appropriate by the Board of Directors.

(iii) Basis for Assessment.

(a) Lots Generally. Each Lot owned by a person other than Developer and builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon 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 Clause (i) above.

(iv) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in subparagraph (iii) above, shall fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

D. Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of the Lot Owner hereunder but which such Owner has not undertaken as required hereunder, and/or defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority or the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

E. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at **ten percent (10%)** per annum plus a late charge not exceeding twenty five (25) dollars. The Association shall be entitled to initiate any lawful action to collect delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. If the Association has provided for collection of any 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 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 Area or abandonment of his Lot.

F. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien or 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 Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

G. Certificates. The Association shall, upon reasonable demand by a Lot Owner, at any time, furnish a letter in writing signed by an officer of the Association, as to the accounting status of Assessments on a Lot showing the balance due the Association, if any.

H. Annual Budget. By majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations can effectively be met. The annual budget shall be submitted to all interested Lot Owners at least thirty (30) days prior to the start of the fiscal year.

I. Suspension of Privileges of Membership Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member

(i) for any period during which any of the Association's charges or any fines/fees assessed under these Restrictions owed by the member remains unpaid;

(ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and

(iii) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Association.

J. Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources nor take a public position in opposition to future phases of **Mulberry Farms** proposed by the Declarant or changes to current phases of **Mulberry Farms** proposed by the 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.

11. REMEDIES.

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

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

C. Enforcement by Town of Westfield Plan Commission. These Restrictions may be enforced by the **Town of Westfield and Hamilton County Plan Commissions**, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

12. EFFECT ON BECOMING AN OWNER.

The Owner(s) of any lot subject to these Restrictions by acceptance of a deed conveying title hereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Declarant, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the Owners and subsequent Owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

13. TITLES.

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

14. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2007, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the Owners of Seventy percent (70%) of the numbered Lots in the Development.

15. SEVERABILITY.

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

16. AMENDMENT TO THIS DECLARATION.

A. Generally. If not otherwise included in the above, this Declaration may be amended or changed at any time by an instrument signed and recorded in the **Hamilton** County Recorder's Office by the following:

(i) Declarant.

(ii) The appropriate officers of the Board of Directors of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) vote of Class A members cast at a formal meeting duly called for the purpose of amending this Declaration and to the extent required by Paragraph 17, (below), and applicable state law.

B. By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the Development Period. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of **Hamilton** County Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of the Owners with respect to Lots conveyed to such owner, subject to the provisions already established by this Declaration, prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on residences at the time of such amendment. Declarant shall give notice in writing to such Owners of any amendments. Except to the extent authorized in Paragraph 2(F), 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 Developer has previously conveyed unless he has the consent of the Owner of such Lot.

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

17. Approvals by Declarant.

As long as there is a Class B Member there is an active Declarant; the following actions shall require the prior written approval of Declarant (or his authorized representative): the addition of real estate to the Tract; dedication or transfer of the Common Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Common Area; and amendment of this Declaration and any Supplemental Declaration.

18. Non-Liability of Developer and Declarant.

Developer and Declarant shall not have any liability to a Lot Owner, Builder 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 (to be) constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree that the lot purchaser (Owner) has inspected the lot, soils, compaction, drainage, manhole covers, swails, easements, utility placements, lot lines, set backs, and accepts the lot "as is" and agrees to indemnify and hold Developer and Declarant free and harmless from and against any and all liability arising from or related to, or in connection with the Lot described in such deed. Developer and Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by the Developer and Declarant and no duty of, or warranty by, Developer and Declarant shall be implied by or inferred from any term or provision of this Declaration.

Further, the Developer and the Declarant make no warranties or guarantees of any kind, and lot purchasers should obtain professional construction advise and inspections of the lot, land, soil, compaction integrity, drainage availability, lake uses, depths, and safety issues of purchasing and owning a lot in this development with a deep lake, prior to signing a contract to purchase a lot(s) and become an Owner.

19. ROADS.

All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first above written.

"DECLARANT"
SPRINGMILL PROPERTIES, LLC
BY: Platinum Properties, LLC, General Partner

By: Paul F. Rioux, Jr.
Paul F. Rioux Jr., President
Platinum Properties, LLC

9809802449
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 01-16-1998 At 01:45 pm.
DEC COV RES 63.00

STATE OF INDIANA,)
)**SS:**
COUNTY OF MARION ,)

Before me, a Notary Public, in and for said County and State, personally appeared Paul F. Rioux Jr., President of Platinum Properties, LLC, the General Partner of **Springmill Properties, LLC** as the Declarant herein, and acknowledged the execution of the foregoing instrument this 12th day of January, 1998.

My commission expires:

6-3-2001

Jolene E Burkhard
Signature of
Notary Public

Jolene E. Burkhard (Printed)

Resident of

Hamilton County, Indiana

This instrument prepared by: Tim DeHaan
Vice President
Platinum Properties, LLC
9551 Delegates Row
Indianapolis, IN 46240

EXHIBIT A

Description for Mulberry Farms – Section 1

A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 18 NORTH, RANGE 3 EAST LOCATED IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE ALUMINUM PLUG AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 18 NORTH, RANGE 3 EAST; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS (ASSUMED BEARING) 882.71 FEET ON AND ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER TO A PK NAIL AT THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS 903.87 FEET, MORE OR LESS, ON AND ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER TO A PK NAIL AT THE SOUTHWEST CORNER OF TRACT #2 AS DESCRIBED IN DEED RECORD 264, PAGE 297, SAID PK NAIL BEING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS 841.12 FEET FROM THE RAILROAD SPIKE AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH 88 DEGREES 47 MINUTES 26 SECONDS EAST 1326.33 FEET, MORE OR LESS, PARALLEL WITH THE NORTH LINE OF SAID SOUTHWEST QUARTER AND ON AND ALONG THE SOUTH LINE OF SAID PARCEL #2 TO A 5/8" IRON ROD WITH "CRIPE" CAP ON THE EAST LINE OF THE WEST HALF OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 07 MINUTES 50 SECONDS EAST 858.41 FEET ON & ALONG THE EAST; LINE OF THE WEST HALF OF SAID S.W. 1/4,; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 397.19 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS 51.31 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 200.00 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS 124.77 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 730.80 FEET TO THE POINT OF BEGINNING. CONTAINING 26.72 ACRES, MORE OR LESS.