

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS & EASEMENTS
AS PART OF THE PLAT OF VILLAS AT TIGER'S RETREAT
AN ADDITION TO THE CITY OF WARSAW
KOSCIUSKO COUNTY, INDIANA

PLAT BOOK 13 Pg - 21

200512610

THIS DECLARATION, made on the day hereinafter set forth by the Undersigned as the owner in fee simple of Lots Numbered One (1) through Thirty (30), consecutive and inclusive, in the Villas at Tiger's Retreat, an addition to the City of Warsaw, Kosciusko County, Indiana, according to the Plat thereof (hereinafter referred to as "DECLARANT"), WITNESSETH THAT:

WHEREAS, Declarant is the owner in fee simple of Lots Numbered One (1) through Thirty (30), in the Villas at Tiger's Retreat, an addition to the City of Warsaw, Kosciusko County, Indiana, according to the Plat and desires to impose upon each and all of said Lots the covenants hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that all of the aforesaid Lots Numbered One (1) through Thirty (30), in the Villas at Tiger's Retreat, an addition to the City of Warsaw, Kosciusko County, Indiana, shall be impressed with and shall be held, sold, and conveyed subject to all of the following covenants which shall run with said Lots and be binding on all parties now having or hereafter acquiring any right, title or interest in the same or any part thereof, their heirs, successors and assigns and shall inure to the benefit of and be enforceable by each owner thereof.

ARTICLE I

DEFINITIONS

200500015485
Filed for Record in
KOSCIUSKO COUNTY INDIANA
LASHAWN BRUMFIELD
10-13-2005 At 08:30 am.
RESTRICTION 40.00

Section 1. "Developer" shall mean Biggs, Inc., Ralph E. Biggs, President.

Section 2. "Association" shall mean and refer to Villas at Tiger's Retreat, Inc., an Indiana Not-For-Profit Organization, its successors and assigns. The membership of this association includes Lot # One (1) through Thirty (30) in the Villas at Tiger's Retreat to the members of the above described lots.

Section 3. "Owner" shall mean and refer to the record owner, whether on or more persons or entities, of the fee simple title to any lot or part thereof which is a part of the properties hereinafter defined including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to the aforesaid Lots Numbered One (1) through Thirty (30), the Villas at Tiger's Retreat, an addition to the City of Warsaw, Kosciusko County,

Indiana, according to the Plat thereof and such other Lots in said subdivision, the Owners of which shall elect, as hereinafter provided, to adopt this Declaration of Covenants.

Section 5. "Plat" shall mean and refer to the aforesaid Plat of the Villas at Tiger's Retreat and will be recorded in the Office of the Recorder of Kosciusko County, Indiana.

Section 6. "Lot" shall mean and refer to either or any part of Lots One (1) through Thirty (30), in the Villas at Tiger's Retreat Subdivision.

Section 7. "Living Unit" shall mean and refer to the portion of a building erected on any Lot which is described and intended for the use and occupancy as a residence by a single family which portion of said building is divided by a common wall from another like portion of said building.

Section 8. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 9. "Street" shall mean any street, avenue, roadway, cul de sac or boulevard of whatever name which is shown on the recorded plat of said Addition, and which has been heretofore and is hereby, dedicated to the public for the purpose of a public street or boulevard purposes.

ARTICLE II

PERMITTED LOT USE

Section 1. Permitted Lot Use. All lots are zoned R-2 and developed under a Planned Unit Development (P.U.D.) Each lot may be divided with a minimum area being 4,400 S.F. all units must have attached garages with minimum of 20 feet x 26 feet.

Section 2. Driveways. All driveways from the street to the garage shall be of hard surface and not less than sixteen (16) feet in width.

Section 3. Minimum Area. No dwelling shall be erected or permitted on any lots or portion of a lot having a ground floor area up on the foundation, exclusive of open porches, breezeways or garage, of less than 1000 square feet in the case of a one-story dwelling, nor less than 850 square feet for a dwelling of more than one story.

Section 4. Building Lines. No dwelling or structure (including a fence or wall) shall be erected, placed or located on any lot nearer to the front lot line (or nearer to the side lot line on corner lots) than the minimum building set-back line 25 feet as shown on the attached plat. No dwelling or structure shall be located nearer than 7 feet to any side lot line. Buildings may be located 10 feet to the rear lot line. On a corner lot, no building or structure shall be located nearer than 7 feet to the interior lot line. No tree, shrub, planting or other obstruction shall be permitted which obstructs a clear view at intersections.

Section 5. Yard Lights. Each dwelling will cause an automatically controlled yard light or other illumination device to be installed in front yard fifteen (15) feet (plus or minus one foot) from the road right-of-way. Such yard lights or illuminating devices will be of such design and construction as shall be approved by the Architectural Control Committee; said Committee shall also have the authority to approve a change in the location of said yard lights or illuminating devices.

Section 6. Signs. No sign shall be erected or permitted, except subdivision designation and informational signs located in the commons area, one professional sign of not more than one foot square, one sign of not more than five (5) square feet advertising the property for sale for rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 7. Fences. No wire, metal or chain link fences will be permitted on any lot.

Section 8. Landscaping. Each home or unit when completed must have lot landscaped with a minimum of 10 shrubs and trees located in the front yard between street and house. Each living unit will have at least one tree planted between sidewalk and street.

Section 9. Nuisances. No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution or which constitutes a nuisance or which is hazardous by reason of fire, explosion or in violation of the laws of the State of Indiana or any subdivision thereof. No lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except as house hold pets, providing the same are not kept, bred or maintained for any commercial purpose. No fuel or oil storage tanks shall be installed underground or located within the main structure of the dwelling, its basement or attached garage. No radio or television antenna or satellite receiver dish nor solar panels or similar structures shall be allowed on any lot or attached to any residential structure located on any lot that is more than 2 feet in diameter. No above ground swimming pool, containing more than 150 gallons of water shall be permitted on any lot. No unlicensed or unregistered automobiles or motorized vehicles may be parked or maintained on any lot. No motor vehicle may be disassembled or be allowed to remain in a state of disassembly on any lot but, instead, shall be equipped at all times for on-road driving.

Section 10. No Temporary Dwelling. No structure of a temporary character, trailer, motor home, basement, tent, garage, barn, tool shed, or other outbuilding shall be either used or located on any lot or used as a residence either temporarily or permanently.

Section 11. Easements. Easements are hereby expressly reserved and dedicated with dimensions, boundaries and locations as designated on the attached plat for the installation and maintenance of public utilities (including but not limited to, water, gas, telephone, electricity, cable T.V., and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

- a. Any utility company and the Developer, their successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvement installed by an authorized utility.

- b. No buildings or structures located in the Addition shall be connected with distribution facilities provided by electrical, television or telephone services, except by means of wires, cables or conduits situated beneath the surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Addition, and except for such housing, pedestals or facilities as may be appropriate for connection of utility services for individual lot owners.) Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables.
- c. The utility operating the sewer lines and sewage disposal plant for said subdivision shall have jurisdiction over the installation of all sewer connections and the same shall be installed to the property lines of each lot by the developers. No individual water supply system, or individual sewage disposal system, shall be installed, maintained or used in the Addition with the exception of a well or other water system that may be used for maintaining the quality and quantity of the water in the Lakes. No rain or storm water runoff from roofs, street pavements or otherwise, or any other surface water, shall at anytime be discharged into, or permitted to flow into, the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water run-off system. No sanitary sewage shall at any time be discharged or permitted to flow into the storm water and surface water run-off sewer system.

Section 12. Sidewalks. Plans and specifications for this subdivision, on file with the Warsaw Plan Commission, require the installation of concrete sidewalks within the street rights-of-way in front of Lots 1 thru 30 all inclusive.

Section 13. Mailboxes. Mailboxes will be located at the location(s) that the developer along with the U.S. Postal Service designates. No individual mailboxes, and or newspaper boxes will be allowed without the Board of Directors approval.

ARTICLE III

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Upon the sale of any Lot the purchaser and owner thereof shall immediately become a member of the Association on the date of said conveyance. Upon becoming a member of the Association, a member shall be obligated to contribute to the maintenance

assessments in accordance with Article III of this Declaration, and shall be bound by all of the other terms of this Declaration. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The purchaser/owner must join the Villas at Tiger's Retreat Association.

Section 2. Classes of Membership. The Association shall have one (1) class of voting membership:

Class A. Class "A" members shall be all members of the Association and shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determined, but in no event shall more than one (1) vote be cast with respect to any lot.

Section 3. Board of Directors. The Owners of Lots shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Biggs, Inc. Until such time as a Board of Directors is elected for the Association, Biggs, Inc. shall act as the Board of Directors and have all of the powers and duties granted to the Board of Directors.

Section 5. Purpose

- (a) To establish an association of home owners located on Lots numbered one (1) through thirty (30) in the Villas at Tiger's Retreat Subdivision, an addition to the City of Warsaw, Kosciusko County, Indiana.
- (b) To provide for the maintenance, repair, and repaving of all driveways and service walks within the boundaries of each Lot located in the Villas at Tiger's Retreat Subdivision, the owners of which shall elect to adopt the Declaration of Covenants of said Association, all as from time to time determined by the Board of Directors.
- (c) To provide exterior maintenance upon each Lot as follows: paint repair, replace and care for roofs, gutters, downspouts, exterior building surfaces of living units, and other exterior improvements, lawns, shrubs, trees, trash removal and snow removal from the paved portions of said driveways and service walks on Lots Numbered One (1) through Thirty (30) in the Villas at Tiger's Retreat Subdivision, an addition to the City of Warsaw, Kosciusko County, Indiana, according to the recorded Plat thereof the owners of which shall elect to adopt the Declaration of Covenants of said Association, all as from time to time determined by Board of Directors.
- (d) To provide maintenance of all common areas and exterior of all units. Developer will deposit \$2,000.00 into a separate interest bearing account in the name of the association. The association will add to this fund at a rate of \$7.00 per unit per month annually for this service.

The foregoing clauses shall be construed as powers as well as purposes, and the matters expressed in each clause shall, unless otherwise expressly provided, be in no wise limited by reference to our inference from the terms of any other clause, but shall be regarded as independent powers and purposes. The numeration of specific powers and purposes shall not be construed to limit or restrict in any manner the meaning of general terms or the general powers of the corporation nor shall the expression of one thing be deemed to exclude another not expressed although it be of like nature.

The developers will establish a corporation that shall be authorized to exercise and enjoy all the other powers, rights and privileges granted by the Indiana Not-for-Profit Corporation Act of 1971 and all Acts amendatory thereof or supplemental thereto to Corporations organized thereunder and all powers conferred upon such corporations by the laws of the State of Indiana enforced from time to time insofar as not in conflict therewith or which may be conferred by all acts heretofore amendatory of and supplemental to said act or said laws. The enumeration of certain powers as herein specified, is not intended to be exclusive or as a waiver of any of the powers, rights or privileges granted or conferred by the aforesaid Act.

ARTICLE IV

CONVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) monthly assessments or charges; and
- (b) special assessments for improvements and operating deficits; and
- (c) special assessments, as provided in Articles IV and V; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessments is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless such successors expressly assume the same.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement and maintenance of the properties and the living units situated thereon, payment of insurance premiums, and for other purposes as specifically provided herein.

Section 3. Maximum Monthly Assessments.

- (a) Until July 2006, the maximum monthly assessment on any living unit shall be Eighty-Four Dollars (\$84.00) per living unit.
- (b) From and after July 2006, the maximum monthly assessments may be increased each calendar year not more than twelve percent (12%) above the maximum assessment for the previous year without a vote of the membership.
- (c) From and after _____, the maximum monthly assessment may be increased above twelve percent (12%) by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (d) The Board of Directors of the Association may fix the monthly assessments at an amount not in excess of the maximum.
- (e) A portion of such monthly assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and maintenance of the properties and the living units thereon.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In to the monthly assessments authorized above, the Association may levy a special addition assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessments shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessments. Both monthly and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all lots or units and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein and the insurance assessments provided for in Article V shall commence as to each Lot on the first day of the first month following the conveyance of such Lot by Declarant. The Board of Directors shall fix any increase in the amount of the monthly assessments at least thirty (30) days in advance of the effective date of such increase. No Special assessments shall be made against any Lot prior to the aforesaid date on which monthly assessments against it first commence. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Associations. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such lot assessed, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) Per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Lot, or both, and there shall be added to the amount of such assessments the costs of preparing and filing the Complaint in such action; and in the event a Judgment is obtained such Judgment shall include interest on the assessments as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action in favor of the prevailing party.

No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien mortgage and any purchase money mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or form the lien thereof, provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any said mortgage on such lot (without the necessity of joining the Association in any such foreclosure

action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

ARTICLE V

MAINTENANCE

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements within his living unit, including the heating and air conditioning system and any partitions and interior walls. Each Owner shall repair any defect occurring within his living unit which, if not repaired, might adversely affect the adjoining living unit. He also shall be responsible for the maintenance, repair and replacement of all windows in his residence and also the doors leading into the residence, including garage doors, and any and all other maintenance, repair and replacements of the improvements on his Lot which the Association is not required to perform; provided, that any change in the color of exterior doors and garage doors, window frames and other exterior of a living unit which is the Owner's obligation to maintain must be first approved in writing by the Board of directors of the Association. No Owner shall make any alterations or additions to the exterior of his living unit nor perform exterior maintenance thereof required to be performed by the Association without the prior written approval of the Board of Directors of the Association. Further, no Owner shall make any alteration to and within his respective living unit which would affect the safety or structural integrity of the building in which the living unit is situated or to which it is attached.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Driveways. The Association shall be responsible for the maintenance, repair and repaving of all driveways and service walks within the boundaries of each Lot subject to assessments hereunder.

Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the driveways and service walks provided in Section 2 above, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces of living units, and other exterior improvements, lawns, shrubs, trees, trash, removal and snow removal from the paved portions of said driveways and service walks. Such exterior maintenance shall not include glass surfaces, doors and doorways, windows and window frames.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VI

INSURANCE

Section 1. Casualty Insurance. Each Owner of a Lot shall be responsible for, shall purchase and continuously maintain a casualty insurance policy or policies affording fire and extended coverage insurance insuring such Owner's properties and all living units thereon, in an amount equal to the full replacement cost.

Certificates or evidence of such insurance coverage shall be filed with and be kept on file with the Association. The Association will at least annually review the amount and type of such insurance and upon written notice and request each Owner shall purchase such additional insurance as the Board of Directors of the Association in its discretion deems necessary to provide the insurance coverage herein required. If an Owner fails to provide such requested additional insurance coverage, the Association shall cause such full replacement value to be determined by a qualified appraiser and shall purchase any required additional insurance and the cost of such appraisal and additional insurance shall be levied against and included in the monthly maintenance assessments for such Lot.

Section 2. Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 3. Fidelity Bond. The Association shall further purchase and continuously maintain a fidelity bond containing errors and omission coverage, for the benefit of all Owners and their

mortgagees protecting them against any and all damages, costs and expenses, including reasonable attorneys' fees, which they or any of them may suffer or incur by reason of:

- (a) The defalcation, misapplication or conversion of monies paid by Owners to the Association or its Board of Directors or of monies received by the Association, its Board of Directors, or any officers, employee or agent thereof to be held in trust for owners and/or their mortgages; and
- (b) The failure of the Association, its Board of Directors, any officer, employee or agent to faithfully perform all of the Association's duties and responsibilities hereunder, including, but not limited to, failure to maintain casualty insurance as herein required on any living unit.

Section 4. Monthly Assessment for Insurance. The premiums for all such insurance and bonds hereinabove described shall be paid by the Association and be made part of the monthly assessment to which each Lot owned by Association members shall be subject under the terms and provisions of Article IV.

Section 5. Distribution to Mortgagee. In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and his mortgagee jointly.

Section 6. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property and the contents of his living unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him), and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing. Each Owner must obtain casualty insurance at his own expense upon his Lot.

Section 7. Casualty and Restoration. Damage to or destruction of living unit, lot or other improvements due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association under no lien construction contracts and the proceeds of insurance, if any, shall be applied for that purpose.

Section 8. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty are not adequate to cover the costs or repair and reconstruction of any living unit suffering casualty damage, or in the event there are not proceeds, the costs of restoring the damage and repairing and reconstructing any living unit so damaged or destroyed shall be borne by the respective Owner or Owners of such living unit to the full extent of the additional costs and expenses of such restoration, repair or reconstruction over and above the insurance proceeds allocable to said living unit. If any Owner refuses or fails to make the required repairs necessary to restore any casualty damage, and shall leave his living unit in a state of disrepair, the Association shall complete the restoration and pay the cost thereof

through an assessment against the other Owners which assessment shall be considered a special assessment constituting a lien on the living units of that Owner or those Owners who refuse or fail to make such repairs or restoration at the time required by the Association's Board of Directors and the Association may, in the same manner as provided for the collection of other assessments, foreclose such lien or otherwise proceed to collect the amount thereof from said defaulting Owners for the benefit of and on behalf of the other Owners who have paid such additional costs of restoration or repair.

For purposes of Section 7 above, repair, reconstruction and restoration of any living unit shall mean construction or rebuilding as it existed immediately prior to the damage or destruction and with the same or similar type of architecture.

Section 9. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used, in the maintenance of the properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the living units affected and their mortgagees who are the beneficial Owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of a living unit upon the properties and placed on or abutting upon the dividing line between the Lots, as such dividing line was created by the conveyance of said unit, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article V hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VIII

ENCROACHMENTS AND EASEMENTS

Section 1. Encroachment. If, by reason of the location, construction, settling or shifting of a building, any part of a building consisting of a living unit appurtenant to a Lot (hereinafter in this Article VIII referred to as the "encroaching lot") now encroaches or shall hereafter encroach upon any minor portion of any other adjacent Lot, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the encroaching Lot for the maintenance, use and enjoyment of the encroaching Lot and all appurtenances thereto.

Each Owner shall have an easement in common with each other Owner to use all pipes, wire, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving his Lot.

Section 2. Easement for Maintenance. The Association shall have the irrevocable right to have access to each living unit (servient unit) from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any wall, roof or other structural component of an adjacent living unit (dominant unit) which shares a common roof or common wall with the servient unit as is accessible from or through such servient unit.

The Association shall also have such irrevocable right of access to each living unit for the purpose of making emergency repairs therein necessary to prevent damage to an adjacent living unit. In the event that the Association is not required under the terms of these covenants to perform the necessary repair, maintenance or replacement of the wall or other structural component of a dominant unit or it fails to commence the work of such repair, maintenance or replacement within a reasonable time after demand therefor by the Owner of the dominant unit, then the Owner of said dominant unit shall have for the purposes of performing such work the same irrevocable right of access to the servient unit as is granted herein to the Association.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants herein enumerated, Declarant, any persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana Law, with or without proving any actual damages, including the right to secure injunctive relief, and shall be entitled to recover reasonable attorney's fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Kosciusko County, Indiana, signed by the then Owners of at least Sixty per cent (60%) of the Lots; provided, however, none of the rights of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the properties, at any time within two (2) years after the recordation hereof, except that Declarant shall not effect any of the following changes without the approval of Sixty per cent (60%) of the first mortgagees of the Lots (based upon one (1) vote for each mortgage) or Sixty per cent (60%) of the Owners of the Lots:

- (a) change in the method of determining the obligations, assessments, dues or other charges which may be levied against the Owners;
- (b) change the provisions herein governing the exterior maintenance of living units, walks, lawns, etc.;
- (c) allow the Association to maintain fire and extended insurance coverage on living units in an amount less than the full insurable value thereof (based on current replacement cost)

This Declaration shall be effective and binding for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Kosciusko County, Indiana, and shall automatically extend for successive period of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Mortgagee Rights. Any lender or lenders holding a first mortgage or purchase money mortgage upon any Lot or Lots may, jointly or singly, pay any overdue premiums on any hazard, casualty, liability or other insurance policies, or secure new insurance coverage on the lapse of any policies for any living units mortgaged to them. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorney's fees.

Section 4. Notice to Mortgagees. The Association upon request, shall provide written notification to any lender holding a first mortgage or purchase money mortgage upon any Lot specifying the defaults of the Owner of such Lots, if any, in the performance of such Owner's obligations under this Declaration, which default has not been cured within sixty (60) days.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Covenants to be executed on this 24th day of August, 2005.

BIGGS, INC.

BY: Ralph E. Biggs
Ralph E. Biggs, President

STATE OF INDIANA, COUNTY OF ADAMS, SS:

Before me, the undersigned Notary Public, in and for said County and State, this 24th day of August, 2005, personally appeared Ralph E. Biggs, President of Biggs, Inc., being over the age of eighteen (18) years, and acknowledged the execution of the foregoing Declaration of Covenants for the uses and purposes therein contained.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



My Commission Expires: 8/23/08

Regina L. Glover
Regina L. Glover, Notary Public
Resident of Adams County, Indiana