

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

THE VILLAGE OF TURNER TRACE

Avon, Indiana

Dan Muehlenbein and Turner Trace, LLC, as Owner and Developer of The Village of Turner Trace, a subdivision located within the real estate more particularly described on attached Exhibit "A"; do hereby restrict and covenant the Lots of said subdivision and other area within the boundary of said subdivision and themselves, their grantees, assigns, successors, legal representatives, and to any person, persons, corporations, banks, and associations and/or anyone who may acquire title to any of said Lots or other areas, as to the following terms, stipulations, conditions, restrictions, and covenants which shall apply in their entirety to all of said subdivision:

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

(a) "Applicable Date" means the earlier of (i) the date on which all Lots in the Development Area have been improved by the construction thereon of Dwellings or (ii) the 1st day of July, 2002.

(b) "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

(c) "Assessment" means a sum lawfully assessed against the Members or Owners, or as declared by this Declaration, any Supplemental Declaration, the Articles or the ByLaws.

(d) "Association" means The Village of Turner Trace Property Owners Association, Inc., an Indiana nonprofit corporation.

(e) "Board of Directors" means the governing body of the Association.

(f) "By-Laws" means the Code of By-Laws of the Association, as amended from time to time.

(g) "Committee" means the Architectural and Environmental Control Committee composed of Dan Muehlenbein and Darrell Brosius or their duly authorized representatives, all of whom shall serve without compensation for services performed as committee members. In the event of the death or resignation of any member of said committee, the remaining member or members shall have full authority to perform the duties of the committee, or to designate a representative with like authority, who must be an owner as hereinafter defined.

(h) "Common Areas" shall mean those areas on the Plat or Plats marked as such or those areas other than Lots. The Common Areas are hereby created and reserved:

i. solely for the common visual and aesthetic enjoyment of the Owners;

ii. for use by the Developer during the Development Period for the installation of retention and detention ponds or lakes, entryways and nature areas, if any;

iii. for the use as retention and detention ponds or lakes, entryways and nature areas, if any; and,

iv. for the use of the Association for the management and control of retention and detention ponds or lakes, entryways and nature parklands and the installation, maintenance and repair of improvements thereto.

These areas shall be governed by the Association. These areas shall be conveyed to and accepted by the Association at such time as deemed necessary by Developer.

(i) “Declarant” means Dan Muehlenbein and Turner Trace, LLC, their successors and assigns to their interest in the Tract other than Owners purchasing Lots by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

(j) “Developer” means Dan Muehlenbein and Turner Trace, LLC or their successors and assigns.

(k) “Development” means the residential development known as The Village of Turner Trace, which now exists or may hereafter be created within the real estate described on attached Exhibit “A” as and being the same as shall be subdivided by plat or plats.

(l) “Development Area” means the land described in Exhibit “A” together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

(m) “Development Period” means the period of time during which Developer owns any one (1) Lot within the Development.

(n) “Dwelling” means a room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen facilities, and designed for or used as a permanent residence by at least one Person.

(o) “Easements” means certain “Drainage Easements”, “Utility and Drainage Easements”, “Maintenance Easements” and “Landscaping Easements”, which are referenced on the Plat.

(p) “General Assessment” means an Assessment made pursuant to Paragraph 47 (c).

(q) “Lot” means any numbered parcel of real estate shown and identified as a Lot on the Plat.

(r) “Maintain” means maintain, repair and replace as necessary or appropriate.

(s) “Member” means a member of the Association and “Members” means all Members of the Association.

(t) "Occupant" means any Person who is in possession of a Dwelling either as an Owner or as a tenant pursuant to a lease or other occupancy agreement.

(u) "Owner" means the Person or collection of Persons who has acquired or is acquiring any right, title, or interest, legal or equitable, in and to a Lot or other area in this subdivision, but excluding those Persons having such interest merely as security for the performance of an obligation.

(v) "Parcel" means each platted subdivision or part thereof, or parcel of land consisting of one or more Lots within the Development Area that are subject to the same Supplemental Declaration or are declared by Declarant to constitute a "Parcel". One or more Lots may be included in more than one Parcel.

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

(x) "Plat" or "Plats" shall mean the subdivision plat or plats for The Village of Turner Trace, the first section of which was recorded on the ____ day of _____, 2002, as Instrument # _____ in the Office of the Recorder of Hendricks County, Indiana.

(y) "Pond" means a body of water located in the Development Area and depicted on the general plan of development and "Ponds" means all of such bodies of water.

(z) "Section" means that portion of the Development Area that is depicted on a Plat.

(aa) "Site Furniture and Facilities" means any furniture, trash containers, sculpture or other furniture, fixtures, equipment or facilities constructed, installed or placed in the Development Area by Declarant or the Association and intended for the common use or benefit of some, if not all, of the Owners and Occupants.

(bb) "Special Assessment" means an Assessment made pursuant to Paragraph 47 or any other provision of this Declaration or any Supplemental Declaration authorizing the levying of a Special Assessment.

(cc) "Supplemental Declaration" means any supplemental declaration of covenants, conditions or restrictions which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section or Parcel and contains such complementary or supplementary provisions for such Section or Parcel as are required or permitted by this Declaration.

(dd) "Tract" means the land described in Exhibit A and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

2. **Declaration**. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the

Restrictions. The Owner of any Lot or Parcel subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or Parcel, or (ii) by the act of occupancy of any Lot or Parcel, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the Lots and Parcels affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. **Additions to the Tract.** Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered. The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Association any revisions to the general plan of development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the general plan of development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. **Land Use.** Lots shall be used only for single family residential purposes, except for permitted townhomes as shown on the Plat. No structure of any kind on said real estate shall be used for the purpose of carrying on a business, trade or profession. Where an owner acquires adjoining Lots for the purpose of building one dwelling across the common Lot line, any side Lot line set back restrictions or regulations shall not apply to said common Lot line. No structure shall be built across Lot lines coinciding with sanitary sewer easements, drainage easements, and utility easements.

5. **Dwelling Size.**

A. **General Single Family Dwelling Requirements Applicable to All Single Family Dwelling Lots.** No single family dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than a single-family residence not to exceed three stories in height. Dwellings on all Lots shall have, at a minimum, attached two-car garages; the entrances of any garage shall be approved by the Committee. The ground floor area of the main structure of any one-story dwelling, excluding garages and one-story porches, shall be not less than Two Thousand (2,000) square feet. The ground floor area of the main structure of any two-story or three story dwelling, excluding garages and one-story porches, deck and patios, shall be not less than One Thousand Two Hundred (1,200) square feet, with no less than a total of Two Thousand Two Hundred (2,200) square feet of finished floor space in such two-story or three story structure.

B. Specific Single Family Dwelling Size Requirements Applicable to Specific Single Family Dwelling Lots. The size of the Dwelling on certain Lots shall be greater than the General Single Family Dwelling Size Requirement. Such Lots are as follows:

Lots 184, 185, 186, 187, 188, 189

The ground floor area of the main structure of any one-story dwelling, excluding garages and one-story porches, shall be not less than Two Thousand Four Hundred (2,400) square feet. The ground floor area of the main structure of any two-story or three-story dwelling, excluding garages and one-story porches, deck and patios, shall be not less than One Thousand Six Hundred (1,600) square feet, with no less than a total of Two Thousand Eight Hundred (2,800) square feet of finished floor space in such two-story or three-story structure.

Lots 91, 92, 235, 236, 237, 238, 239, 240

The ground floor area of the main structure of any one-story dwelling, excluding garages and one-story porches, shall be not less than Two Thousand Eight Hundred (2,800) square feet. The ground floor area of the main structure of any two-story or three-story dwelling, excluding garages and one-story porches, deck and patios, shall be not less than Two Thousand (2,000) square feet, with no less than a total of Three Thousand Two Hundred (3,200) square feet of finished floor space in such two-story or three-story structure.

C. Townhome Dwelling Size. Certain Lots in the Development are identified as Townhomes on the Plat (the "Townhome Lots"). No dwelling shall be erected, altered, placed, or permitted to remain on any Townhome Lot larger than a four family residence building, not to exceed three stories in height. An individual family dwelling unit within the multi-family residence building on the Townhome Lots shall have, at a minimum, attached two-car garages for each individual family dwelling unit and the entrances of any garages shall be from the side of the lot facing the alley. The ground floor area of an individual family dwelling unit within a two or three story multi-family residence building excluding garages and one story porches, deck and patios, shall be not less than One Thousand (1,000) square feet, with no less than a total of Two Thousand (2,000) square feet of finished floor space in such two-story or three-story structure. No one story residence shall be permitted on any Townhome Lot.

6. **Building Lines.** Front building lines are established as shown on the Plat between which lines and the property lines or the street, no structure shall be erected or maintained. Side building lines are established as shown on the Plat or by the Town of Avon as the case may be, between which lines and the property lines or the street, no structure shall be erected or maintained.

7. **Outbuildings.** No trailer, tent, shack, garage, barn, above ground storage tank, or other outbuilding or temporary structure shall be located on used for temporary residential purposes on any Lot.

8. **Animals.** No animals or poultry shall be kept or maintained in this subdivision except common household pets. Common household pets shall be limited to three (3) per Lot. All

common household pets shall remain on a leash controlled by the pet's owner when not on such owner's Lot. In no event shall any pet be a nuisance to any landowner in the Development.

9. **Architectural Design.** No building, wall, fence, or other structure shall be constructed, erected, placed, or altered in the Development until the location plan (showing all landscaping), building plans, and specifications have been first submitted to, and approved by, the Committee as to harmony with the exterior design, quality, and aesthetic appearance of structures already existing, and as to conformity with grading plans, first floor elevations, destruction of trees and other vegetation, and any other such matter as may affect the environment or ecology of the Development. The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove any plans and specifications within fifteen (15) business days after such plans and specifications have been submitted to it, such plans shall be deemed approved and the provisions of this Covenant satisfied. All plans shall be submitted to the Committee via certified mail at P.O. Box 53232, Indianapolis, Indiana 46253, or hand delivered to a Committee Member.

10. **Subdividing Not Permitted.** No parcel of land shall be re-divided into a smaller parcel.

11. **Property Owners Association.** All Lots and Owners thereof shall belong to The Village of Turner Trace Property Owners Association and shall be governed by the Articles of Incorporation, By-Laws, and other corporate restrictions of such Association.

12. **Construction and Repair Time.** A dwelling on each Lot shall be commenced, under a properly issued building permit, within one (1) year from the date of the deed from the Developer to the purchaser of any respective Lot. Any house, fence, water line, sewer, ditch, or any structure, once approved and under construction, must be completed one (1) year from the date construction starts. Any structure that is externally damaged by fire, tornado or other disaster shall be repaired or removed within six (6) months of such occurrence.

13. **Utility Building and/or Barn.** There shall be no storage or utility buildings, barns, or other outbuildings on any Lot within the subdivision.

14. **Signs.** The only signs permitted to be erected or displayed in this subdivision are: those required by law, a single sign placed by a builder or financial institution to advertise a property during the construction and sales period, a single yard sale or garage sale sign placed by the Owner no more frequently than one day twice each year, a single sign placed by an Owner to advertise the property for sale or rent or to prohibit hunting or trapping.

15. **Storage Tanks.** Any gas or oil storage tanks used in connection with a Lot shall be located within a garage or dwelling such that they are completely concealed from public view.

16. **Hunting and Trapping.** Hunting and trapping are prohibited in this subdivision, except the Association has exclusive authority to allow trapping in the Ponds.

17. **Fences.** All fences, including material and height, require Committee approval before erection. No fence shall extend forward of the furthest back corner of the residence.

18. **Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadways shall be placed, or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street line. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street's property line with edge of driveway. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at such height to prevent obstruction of such sight lines.

19. **Water Supply and Sewage Disposal.** No private or semi-private water supply may be located upon any Lot in the Development which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other similar method of sewage disposal shall be located or constructed on any Lot.

20. **Vehicle Parking.** No boat, trailer, recreational vehicle, non-licensed or non-operational vehicle, truck larger than 3/4 ton pick-up, or camper of any kind (including, but not in limitation thereof, house trailers or mobile homes, camping trailers and boat trailers) ("Restricted Vehicle") shall be kept or parked upon said Lot except within a garage. Notwithstanding the foregoing, a Restricted Vehicle may remain on a Lot for a period of not more than twenty-four (24) hours for the specific purpose of loading and unloading said Restricted Vehicle. In no event shall Restricted Vehicle(s) collectively remain on a Lot for a period greater than four (4) days in any calendar month.

21. **Landscaping.** The Lot owner shall landscape the Lot within sixty (60) days following completion of a dwelling thereon, weather permitting. Each lot as a minimum shall have five (5) trees of shade, ornamental, dwarf, evergreen and deciduous varieties, and twelve (12) shrubs of evergreen, deciduous and flowering varieties. All landscaping shall be approved by the Committee.

22. **Maintenance of Lots and Improvements.** Each Lot owner shall at all times maintain the Lot and any improvements thereon to prevent the same from becoming unsightly by removing all debris, rubbish, dead trees, and other materials or conditions that reasonably tend to detract from or diminish the aesthetic appearance of the subdivision, and by keeping the exterior of all improvements in a good state of repair. No Lots shall be used or maintained as a dumping ground for rubbish, garbage or other waste, and same shall not be kept, except in sanitary containers out of view from street except on days of collection. There shall be no use of exterior or outside incinerators or burners for the burning of trash. All Lots, including unimproved Lots, shall be mowed by the Lot owner(s) or their designated representative at least twice during each of the months of April through September. In the event a Lot owner fails to comply with this provision, then the Committee and/or Homeowner's Association shall have the right to employ third parties to mow the Lot, and the cost there of shall be assessed to the Lot owner. Such costs 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.

23. **Nuisances**. No noxious or offensive activity shall be carried out or allowed to be carried out on any Lot, nor shall anything be done or allowed to be done thereon which may become or be an annoyance or nuisance to the residents of the Development.
25. **Driveways**. Residential driveways shall be constructed of portland cement concrete and/or paver brick. Pavement shall be a minimum of four (4) inches thick excluding sub-base material. Paver brick design, material and color shall be approved by Architectural and Environmental Control Committee. The driveway shall be completed not later than the completion of the construction of the dwelling.
26. **Swimming Pools**. No swimming pools where the water level is either partially or completely above ground level shall be permitted. Any in-ground swimming pool shall be properly fenced so as to protect the safety of others, or shall utilize an automated safety cover approved by Administrative Code Sec. 20-4-27(c). Prior to installation, such fence or safety pool cover shall be approved by the Committee.
27. **Crawl Space and Foundation Drains**. No crawl spaces, eave troughs, gutters, downspouts, or foundation drains shall be constructed so as to discharge water onto a street.
28. **Exterior Antennas and Satellite Dishes**. No television or radio antennas, satellite dishes or similar devices for television, radio and/or telephone reception or transmission may be erected by any Lot Owner on the exterior of a residential dwelling structure in the Development. However, inside attic antennas and cable service are acceptable. Notwithstanding the above, satellite dishes no greater than twenty-four (24) inches in diameter shall be permitted on the exterior of a Dwelling, so long as such dish is not visible from the street running in front of the Lot.
29. **Sidewalks**. Concrete sidewalks with a minimum of four (4) feet shall be constructed on each side of the street. Lot Owners shall be responsible for the cost of constructing and maintaining the sidewalks on their respective Lots. Sidewalks shall be installed at the time of construction of any residential dwelling, and shall be completed prior to occupancy of such dwelling; provided, however, that in no event shall a sidewalk be completed any later than one (1) year from the date an Owner first purchases a Lot from the Developer, even if construction of such residential dwelling has not commenced or is only partially complete as of such date. All sidewalks must be constructed in accordance with the Committee's specifications. Lot Owners shall keep sidewalks on their respective Lots free of snow and cleared of debris.
30. **Gazebos**. Free-standing gazebos are permitted if design and location is approved by the Architectural Committee.
31. **Mail Boxes**. Size, location, lighting, height and composition of every mailbox shall be approved by the Committee prior to installation and shall conform to specifications set forth by the United States Postal Service and/or Postmaster General. Approved mailboxes shall be those equal or similar to Imperial brand classic double mount mailbox with paper slot, examples of which may be requested from the Developer.

32. **Tennis Courts, Racquetball Courts, Paddle Ball Courts, etc.** Construction of tennis courts, racquetball courts, paddle ball courts, squash courts, etc. are required to be approved by the Committee prior to commencement of any construction work related thereto. Lighted courts are not permitted. An application to the Committee for the construction of a racquet sport court shall be accompanied by an application for an acceptable fence design.

33. **Retaining Walls.** Approval of the Committee shall be required prior to installation of any retaining wall. Retaining walls which divert ground water onto adjoining properties or which otherwise substantially change the existing drainage pattern are not permitted.

34. **Play Equipment.** Children's sand boxes, temporary swimming pools having a depth of less than twenty-four (24) inches, swing and slide sets, play houses, tents, badminton and volleyball nets, and the like, shall be permitted in the rear yard of the Lot without prior approval of the Committee; provided, however, that such equipment shall not be more than eight (8) feet high, shall be in good repair (including paint) and every reasonable effort shall have been made to screen or shield such equipment from view. With respect to equipment higher than eight (8) feet, prior approval by the Committee of the design, location, color, material and use shall be required.

Basketball goals shall not be placed on the face of any dwelling in the Development, and must be placed at least thirty (30) feet back from the front property line of the Lot.

35. **Clothes Lines.** Collapsible and removable clothes lines will be permitted by the Committee, but permanent clothes lines will not be approved by the Committee.

36. **Garbage and Other Refuse.** No Owner of a Lot in the Development shall burn or permit the burning out of doors of leaves, garbage or other refuse, nor shall any Owner accumulate or permit the accumulation out of doors of such refuse on his Lot except as may be permitted in Paragraph 37, below. All residential dwelling structures built in the Development shall be equipped with a suitable garbage can or container.

37. **Trash Receptacles.** Every outdoor can or container for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development, except at the times when refuse collections are being made. Every such can or container shall be secured so as to prevent entry by insects and animals.

38. **Gardens.** No garden producing fruits and/or vegetables for consumption shall be visible from any street.

39. **Ditches and Swales.** It shall be the duty of every Owner of every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection.

40. **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 the said Lots as a site for a single-dwelling residential structure, such Lot Owner shall 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 a one single dwelling residential structure. However, no such combination of Lots shall, by itself, reduce any member's vote with the Association (i.e., each Owner will still have one vote for each Lot owned).

41. **Association's Right to Perform Certain Maintenance.** In the event that any Owner of a Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provision of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents and 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.

42. **Blanket Easement.** Each Lot shall henceforth be encumbered by a blanket temporary easement for the purpose of installation, maintenance and upkeep of the drainageways and sub-surface drains of the drive, with this blanket temporary easement being supplementary to the easements depicted on the plat of The Village of Turner Trace.

43. **Easement Area of Lakes.** The easement areas for lakes, as shown on the plat shall only be utilized for maintenance of the lakes and lake area through the Association and shall not be utilized by Owners, other than the Owner of that respective Lot.

44. **Improvements in Lake or Lake Area.** There shall be no fences, piers, decks, docks or other structures or improvements made within the lake or lake area without approval of the Committee and Association.

45. **Lights.** Developer, in its discretion, may install street lights and other light fixtures within the Development, and may transfer said lights and obligations to the Association. The Association shall accept such lighting and the obligations related thereto, if transferred.

46. **Street Address.** The designation of a street address for any dwelling, including location, style, color and material shall be approved by the Committee.

47. **Assessments.**

(a) **Creation of the Lien and Personal Obligation of Assessments.** Each owner of a Lot, except for the Developer, by acceptance of a deed of conveyance, shall be deemed to covenant and agree to pay to the Association: (1) General, annual assessments or charges; (2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) Architectural Control Assessments (to the extent levied).

All Assessments, together with interest thereon and costs of collection thereof, including reasonable attorneys' fees, 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 attorneys' 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.

(b) Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the owners of all Lots and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas situated upon the development including, but not limited to, the payment of taxes and insurance thereof and repair, replacement, maintenance, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

(c) General Assessment.

(i) Basis for Assessment. Subject to subparagraph (e) below, each Lot, other than those Lots owned by the Developer, shall be assessed at a uniform rate without regard to whether a Dwelling or other improvements have been constructed upon the Lot, except that if no Dwelling has been constructed on the Lot, the Association shall waive with respect to such undeveloped Lot that part of any Assessment that is attributable to services (such as trash removal) that are provided only with respect to improved Lots.

(ii) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting of Members duly called for this purpose; provided, however, if a proposed change would adversely affect the Owners of a particular class of property, such change in the basis for assessment may be made only if approved by a majority of the Owners adversely affected.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraphs (i) and (ii) above, fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Association, including the obligation to maintain the Common Areas.

(d) Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section (c) hereof, the Association may levy in any assessment year on each Lot sold by the Developer, its representatives or assigns, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements. Any such assessment shall have the affirmative vote of two-thirds (2/3) of the votes of all voting

members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(e) Architectural Control Assessment. If any Owner or Person acting for or on behalf of, or pursuant to the authorization or acquiescence of, an Owner fails to comply with building guidelines or other requirements for construction of improvements, landscaping and other building activities or maintenance of a Lot or any restrictive covenant or condition specified in a Supplemental Declaration for the Parcel in which such Owner's Lot is located, then the Association may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) Twenty-Five Dollars (\$25.00) for each day that such failure continues after written notice thereof is given by Declarant or the Association to such Owner or (ii) One Thousand Five Hundred Dollars (\$1,500.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Association or Lot owners provided in this Declaration, at law or in equity, in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.

(f) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots within a Parcel on the first day of the month following conveyance of a Lot in the Parcel to an Owner who is not Declarant. The Assessment for each succeeding year shall become due and payable on February 15th of each year. At closing of the initial sale of a Lot to a purchaser, that year's General Assessment shall be prorated for the year and charged to such homeowner at closing. For the purposes of levying the Assessment, Assessments shall be considered as paid in advance and shall be levied against any Lot which is subject to these Covenants. The due date of any Special Assessment under Section (d) hereof shall be fixed in the Resolution authorizing such Assessment.

(g) Effect of Nonpayment of Assessments; Remedies of the Association. If an Assessment is not paid on the date when due then the Assessment and costs of collection thereof as hereinafter provided shall thereupon become a continuing lien of the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. If the Assessment is not paid thirty (30) days after the delinquency date, a penalty fee not to exceed One Hundred Dollars (\$100.00) shall be added thereto and from that date interest at the rate of eighteen percent (18%) per annum shall be added to the delinquent balance and penalty 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 property. There shall be added to such Assessment, delinquent fee and interest the cost of preparing and filing a Complaint in such action; and in the event of Judgment, such judgment shall include interest on the total amount as above provided and reasonable attorney's fees. 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 immediately due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot.

(h) Subordination of the Lien to Mortgages. To the extent specified herein, the lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than twelve (12) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(i) Duties of the Board of Directors. The management, affairs and policies of the Association shall be vested in the Board of Directors. The Board of Directors of the Association shall prepare a roster of the properties and Assessments applicable thereto at least thirty (30) days in advance of such Assessment due date. Such Assessment roster shall be kept in the office of the Association. Written notice of the Assessment shall thereupon be sent to every owner subject thereto.

(j) Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be. Said certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(k) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed on the Association by the Declaration and all Supplemental Declarations will be met.

(l) Exempt Property. The following property, subject to this Declaration, shall be exempted from the Assessments, charges and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to the public use; (ii) all Common Areas of the development; (iii) all properties exempted from taxation by the laws of the State of Indiana upon the terms and to the extent of such legal exemption; (iv) all properties owned by the Developer, its successor and assigns, and held by them or any of them for sale or resale, including any lots which may have been reacquired by the Developer.

(m) Voting, Board and Developer. Each Owner of a Lot in the Development of The Village of Turner Trace shall be a member of said Association and shall have one (1) vote for all matters coming before the Association including the selection of a Board of Directors, which shall consist of not less than two (2) or more than nine (9) Members and which shall assume their duties upon expiration of the term of the Initial Board of Directors which shall consist of two (2) Members, Dan Muehlenbein and Darrell Brosius, which Initial Board shall serve until the sale of seventy-five percent (75%) of the Lots in the Development to homeowners (not builders).

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

If any Owner of a Lot in this subdivision shall fail to maintain his Lot and/or any improvements situated thereon, or to keep sight distances or to construct and/or maintain sidewalks in accordance with these restrictive covenants, the Committee shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean, or perform such other acts as may reasonably necessary to make said Lot, and/or any improvements situated thereon, conform to the requirements of these restrictions. The cost thereof to the Committee shall be collected in any reasonable manner from the Owner. Neither the Committee nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance or other work performed hereunder. Any fine so assessed against any Lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot subordinate only to the lien of a first mortgage until paid in full, and shall also be a personal obligation of the Owner or Owners of that Lot. Such charge shall bear interest at the rate of eighteen percent (18%) per annum until paid in full. If, in the opinion of the Committee, such charge has remained due and payable for an unreasonably long period of time, the Committee may institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing, in any court of competent jurisdiction. The Owner of the Lot or Lots subject to the charge shall, in addition to the amount of the charge due at the time legal action is instituted, be obligated to pay any expenses or costs, including attorney's fees, incurred by the Committee in collecting the same. Every Owner of a Lot in this subdivision, and any person who may acquire any interest in such Lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a Lot in this subdivision is hereby notified that by the act of acquiring, making such purchase, or acquiring such title, such person shall be conclusively held to have covenanted to pay all fines that shall be made pursuant to this paragraph.

49. **Limitations on Rights of the Corporation.** Prior to the Applicable Date, the Association may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf, of the Association.

50. **Approvals by Declarant.** Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Common Areas; mergers and consolidations of Sections or Parcels within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration or any Supplemental Declaration; changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment; and the adoption or modification of building guidelines.

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

52. **Term.** These Covenants will run with the land and shall be binding on all parties, and all persons claiming under them, for a period of twenty-five (25) years from the date these Covenants are recorded, after which twenty-five (25) years they shall be automatically extended for successive ten (10) year periods, unless an instrument signed by a majority of the Lot Owners has been recorded agreeing to change said covenants in whole or in part.

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

54. **Non-Liability of Declarant.** Declarant shall not have any liability to an Owner, Occupant or any other Person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a dwelling is constructed and of the builder of such dwelling and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

55. **Exclusive Builders.** Declarant reserves the absolute right prior to the Applicable Date to restrict construction of dwellings in the subdivision to builders who have been approved by Declarant, such approval to be granted or withheld in the absolute discretion of Declarant. Notwithstanding the purchase of a Lot by an Owner, such Owner may not cause or authorize any Person to construct a dwelling on the Lot other than a builder who has been approved in writing by Declarant.

56. **Further Restrictions.** The Development is further restricted by certain self-imposed development standards agreed to by the Developer. These restrictions are recorded in the office of the Recorder of Hendricks County at Book _____, Page _____.

IN WITNESS WHEREOF, the undersigned, as owner and Developer of the above described real estate, have set their hands and seals this _____ day of _____, 2002.

Dan Muehlenbein

Turner Trace, LLC

By: _____
Darrell Brosius, Member

STATE OF INDIANA)
)
COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State, personally appeared Dan Muehlenbein, and Darrell Brosius as Member of Turner Trace, LLC, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of The Village of Turner Trace, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and seal this ____ day of _____, 2002.

My Commission Expires:

Notary Public - Signature

Resident of _____ County

Notary Public - Printed Name

This instrument prepared by: John J. Moore, Attorney-at-Law, P.O. Box 207, Danville, IN 46122, (317) 745-4300.