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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MICHAEL A. BROWN  
RECORDER

**TICOR TITLE INSURANCE**  
Crown Point, Indiana

Ellendale Old Town Village  
Second Supplemental Declaration  
Of Covenants,  
Conditions, Easements,  
And Restrictions

**FILED**

1 APR 07 2008

PEGGY HOLINGA KATONA  
LAKE COUNTY AUDITOR

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"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." Hazel Gardin

Ticor Title recorded this document as an accommodation. Ticor did not examine the document or the title of the real estate affected.

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Return: Fleming

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**EXHIBIT A**

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Legal Description of Village Real Estate	Exhibit A - Page 1 of 1

## SECOND SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

This Second Supplemental Declaration of Covenants, Conditions, Easements and Restrictions of Ellendale Old Town Village ("Supplemental Declaration") is made as of March 21, 2008, by Daniel M. Rohaley, Successor Trustee to David J. Wilcox under Trust Agreement dated July 30, 1996 and known as Trust № 202615-96 ("Declarant"). The parties executing this Supplemental Declaration have submitted their property to Ellendale Farm, which is contained in and includes that property described in Exhibit "A."

Declarant states as follows:

A. Daniel M. Rohaley, Trustee under Trust Agreement dated September 15, 2005 and known as Trust № 920052648, is the owner of certain real property described in Exhibit "A", and Richard W. Thomas and Julie A. Thomas, husband and wife, are the owners of Lot 55 located within the real property described in Exhibit "A", which is attached hereto and made a part hereof ("Village Real Estate").

B. Declarant established Ellendale Farm, a residential development, and recorded restated covenants on certain property described in such restated covenants recorded in the Lake County Recorder's Office on June 22, 1998 as Document N° 98046488 ("First Restated Declaration"). This Supplemental Declaration supplements the First Restated Declaration, by incorporating certain terms, conditions, restrictions, and covenants of the First Restated Declaration.

C. Declarant intends by this Supplemental Declaration to impose upon the Village Real Estate and the development contemplated hereby mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners and residents of Residential Units in the development contemplated hereby by executing and recording this Supplemental Declaration. The development created on the Village Real Estate shall be known as Ellendale Old Town Village ("Village" or "Village Development").

D. Declarant has formed the Ellendale Farm Property Owners' Association, Inc. as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana ("Ellendale Farm Association") for the purpose of carrying out the powers and duties set forth herein.

E. Declarant will or has formed the Ellendale Old Town Village Property Owners' Association, Inc., as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana ("Village Association") for the purpose of carrying out the powers and duties set forth herein.

F. Declarant intends to convey all or any portion of the Village Common Area in the Village Development in fee simple title, free of financial encumbrances, to the Village

Association subject to easements, restrictions of record and such other conditions as Declarant may at the time of such conveyance deem appropriate.

G. Pursuant to Article VIII and other relevant parts of the First Restated Declaration, Declarant has annexed the Village Real Estate into the Development.

**NOW, THEREFORE**, Declarant hereby declares that all of the Village Real Estate and any additional property as may by subsequent amendment hereto be added and subjected to this Supplemental Declaration will be held, sold, and conveyed subject to the following.

## ARTICLE I

### INCORPORATION OF TERMS

**1.1 Definitions.** Except as otherwise provided, capitalized terms used in this Supplemental Declaration without definition or particular description shall have the meanings given to them in the First Restated Declaration. The provisions of this Supplemental Declaration shall be applied in the context of the Village Association and the Village Development. Capitalized terms that are defined in the First Restated Declaration and apply to the Ellendale Farm Association in the First Restated Declaration shall apply to the Village Association and related terms in this Supplemental Declaration and shall be given meanings consistent with matters relating to the Village Association and related terms.

**1.2 Incorporation.** This Supplemental Declaration is a supplemental declaration. All terms and provisions of the First Restated Declaration, including the Declarant's statements and recitals, are incorporated into this Supplemental Declaration except as otherwise provided herein. However, neither Article XII of the First Restated Declaration nor any provision of the First Restated Declaration pertaining exclusively to Article XII of the First Restated Declaration shall be incorporated into this Supplemental Declaration.

## ARTICLE II

### DEFINITIONS

**2.1 Ellendale Farm Association.** The Ellendale Farm Association means Ellendale Farm Property Owners' Association, Inc.

**2.2 Village Association.** The Village Association means Ellendale Old Town Village Property Owners' Association, Inc.

**2.3 Village Common Area.** The Village Common Area means all portions of the Village Development which have not been designated as Village Lots in the Plat, including any ponds, open space, landscape parcels, streets, street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor

of the Village Association for the common use and enjoyment of the Owners. Outlots A and B as shown on the Plat for the Village are parts of the Village Common Area.

**2.4 Village Development.** The Village Development means the Village Real Estate described on Exhibit "A" and the improvements constructed or to be constructed on it.

**2.5 Village Lot.** A Village Lot is a lot in the Village Development as shown on the Plat.

**2.6 Village Lot.** A Village Lot means a Village Lot.

**2.7 Village Real Estate.** The Village Real Estate is the real estate legally described on Exhibit "A" attached hereto and made a part hereof, and is Additional Land.

**2.8 Landscape Easement.** The easement defined in Section 3.4.1.

**2.9 Wall Easement.** The easement defined in Section 3.4.2.

### ARTICLE III

#### VILLAGE DEVELOPMENT

**3.1 Additional Land.** The Village Development is added to the Development. This Supplemental Declaration applies to the Village Development, except as specifically excluded.

**3.2 Village Association.** In addition to being members of the Ellendale Farm Association, the Owners will have their own property owners' association. Owners will have membership and voting rights in the Village Association. Except as otherwise provided herein, the Village Association will be administered on the same terms as the Ellendale Farm Association.

**3.3 Exterior Maintenance.** In addition to the maintenance upon the Village Common Areas, the Village Association will provide exterior services upon each Village Lot which is subject to assessment hereunder by (1) removing snow and ice from walkways and driveways, (2) installing and maintaining grass lawns and installing and maintaining landscape areas within the Landscape Easement, (3) installing and maintaining the landscape wall on the Wall Easement, and (4) performing any other maintenance duties authorized by the Village Board (as hereinafter defined); however, the Village Association shall not be required to maintain any other improvements, trees, shrubs, or landscaping upon any Village Lot. The Village Association shall be responsible for no other exterior maintenance upon Village Lots, except as otherwise provided herein. The Village Board shall have the sole authority and discretion to determine when and in what manner maintenance duties shall be performed. If the need for maintenance or repair is caused through the willful or negligent act of the owner, his

family, or guest, or invitees, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Village Lot is subject.

**3.4 Additional Easements.** The Village Association has responsibility for installing certain improvements and maintaining certain portions of a Village Lot as will be described in this Section. The areas described will be maintained and controlled by the Village Association. For the purpose of installing improvements and maintaining such improvements on these areas, the following easements are created.

**3.4.1 Landscape Easement.** Declarant retains for itself and declares and grants an easement to the Village Association over the front portion of each Village Lot extending to the front exterior of each Residential Unit, for the purpose of maintaining landscaping improvements, including but not limited to watering systems, and vegetation including the right of access to such lands and adjacent lands reasonably necessary for such installation and maintenance. The Owner will install such improvements and landscaping within the landscape easement that it deems appropriate from time to time.

**3.4.2 Wall Easement.** Declarant retains for itself and declares and grants to the Village Association an easement 16 feet wide, eight feet on each side of the property lines within the lawn areas located on a Village Lot ("Wall Easement") for the purpose of installing and maintaining a landscape wall, including the right of access to such lands and adjacent lands reasonably necessary for such installation and maintenance. The Owner will install a landscape wall within the Wall Easement approximately centered on the Wall Easement constructed of brick, masonry, stone, or other similar materials as approved by Declarant. The Village Association will construct and maintain the landscape wall as it deems appropriate from time to time and may, in its discretion, alter or remove the landscape wall.

**3.4.3 Private Roads.** Declarant has delineated on the Plat alleys for the benefit of the Village. The Village Association will maintain the alleys as Village Common Areas pursuant to this Supplemental Declaration.

**3.4.4 Administration as Village Common Areas.** The Landscape Easement and the Wall Easement and the improvements thereon will be administered, maintained, controlled, and operated as Village Common Areas except that access to the Landscape Easement and the Wall Easement shall be limited only to the Village Association for the purpose of fulfilling its responsibilities under this Supplemental Declaration and the Owner on which the said easements are located, its guests and invitees. The Village Association shall assess the expenses of these activities to the Owners as Common Area Expenses. No other members of the public or property owners within Ellendale Farm shall have a right of access to the Landscape Easement or the Wall Easement as provided for other Village Common Areas in this Supplemental Declaration except as guests and invitees of the Owners of the Village Lot on which the Landscape Easement and Wall Easement exists. An Owner shall not construct improvements or alter existing

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improvements or landscaping on the Wall Easement or the Landscape Easement without the written consent of the Village Association.

**3.5 Architectural Standards.** Notwithstanding anything to the contrary, Declarant or Declarant's designee or appointee, and neither the Ellendale Farm Association, the Board, nor the Village Association or its board of directors, shall have all power, authority, jurisdiction, and control over all Construction on all Village Lots. Such authority of Declarant or Declarant's designee shall be exercised in a manner consistent with that granted to the Ellendale Farm Association and the Board under Article XI of the First Restated Declaration.

**3.6 Encroachment Easement.** If (a) any portion of the Village Common Areas encroaches upon any Residential Unit or upon any other Village Common Area, (b) any Residential Unit encroaches upon any other Residential Unit or upon any portion of the Village Common Areas or (c) any such encroachments shall hereafter occur as a result of (i) settling or shifting of any improvements, (ii) any alteration, repair, or restoration of the Village Common Areas made by or with the consent (when required by the By-Laws) of the Village Association, or made by Declarant or its designee, or (iii) any alteration, repair, or restoration of improvements (or any portion thereof) or of any Residential Unit or Village Common Area after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all any portion of any Residential Unit or the Village Common Areas; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same as long as the improvements shall stand.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS

**4.1 Membership.** In addition to being a member of the Ellendale Farm Association, every Owner will be a member of the Village Association. Membership will be appurtenant to and may not be separated from ownership of a Village Lot.

**4.2 Classes of Membership and Voting Rights.** The Village Association will have one class of voting membership which will be comprised of all owners in the Village Development, without regard to whether there are Residential Units on such Owners' Village Lots. Each Owner will hold one membership for each Village Lot owned and will be entitled to one vote for each Village Lot owned, except as provided in Section 8.6.3 hereof. When more than one person holds an interest in any Village Lot, all such persons will be members. The vote for such Village Lot will be exercised as such co-owners among themselves determine evidenced by a certificate signed by all such Owners filed with the Village Association. Such signed certificate will also be conclusive with respect to voting rights of an Owner in instances where such Owner's voting is referred to in this Supplemental Declaration. In no such event will more than one vote be cast with respect to any Village Lot either with respect to Village Association membership or Village Lot ownership.

**4.3 Board of Directors.** The Members will elect a Board of Directors of the Village Association (“Village Board”) as prescribed by the Village Association’s By-Laws. There will be three members of the initial Village Board, and subsequent Village Boards will have such numbers of members as may be provided in the By-Laws, provided that the By-Laws will not provide for less than three members of the Village Board. The Village Board will manage the affairs of the Village Association. The initial Village Board will be appointed by Declarant and will manage the affairs of the Village Association until Declarant transfers control of the Village Association to the Owners as required herein at Section 4.5 herein.

**4.4 Responsibilities of the Village Association.** The Village Association is hereby authorized to maintain, repair, and replace the Village Common Area, to determine Common Expenses, to collect annual and special assessments, and to grant any approvals whenever and to the extent called for by this Supplemental Declaration for the common benefit of all such Owners. The Village Association will also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Supplemental Declaration. Neither the Village Association nor its officers or authorized agents will have any liability whatsoever to any Owner for any action taken under color of authority of this Supplemental Declaration as for any failure to take any action called for by this Supplemental Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Village Association will procure and maintain casualty insurance for the Village Common Area, liability insurance (including directors’ and officers’ insurance) and such other insurance as it deems necessary or advisable. The Village Association may contract for such services as management, snow removal, security control, lawn care, trash removal, exterior maintenance and repair and such other services as the Village Association deems necessary or advisable.

**4.5 Control and Transfer of Control of Village Association.** During the development and construction stages of the Village Development and for so much of selling period as described hereinafter, the Village Association will be operated and controlled by Declarant. The Village Board will, during such period, consist of persons appointed by Declarant, and each Owner will give and will be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owner is entitled to vote under this Supplemental Declaration, any subsequent supplemental declaration, or under the Articles of Incorporation or the By-Laws of the Village Association.

The control of the Village Association will be transferred to the Owners (which includes Declarant with respect to each unsold Village Lot) 120 days after the date on which Declarant no longer owns any portion of the Village Development platted, to be platted, or to be annexed, as then ascertained, or on such earlier date as Declarant, in its discretion, may determine.

## ARTICLE V

### COMMON MAINTENANCE

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**5.1 Maintenance by Village Association.** In addition to the requirements of Article III hereunder, the Village Association will maintain and keep in good repair the Village Common Areas and such other areas that it deems necessary and advisable for the benefit of the Village Development. The maintenance of the Village Common Area will be deemed to include, but not to be limited to, maintenance, repair, and replacement (subject to later reimbursement from the insurance and casualty loss provisions contained at the Village Association's sole cost and expense as Common Expense) of all of the following located on the Village Common Area: trees, fences, shrubs, grass, signs, Village Common Area access and parking spaces, if any, walks, trails, pedestrian bridges, Drainage System improvements solely dedicated to the Village Development (unless contracted otherwise to a public agency), the Village Common Area lighting and watering systems and other improvements situated upon the Village Common Area. The Village Association may, at its discretion, leave appropriate portions of the Village Common Area unmaintained to produce a "natural effect" for a natural habitat.

**5.2 Liabilities of Owners.** If the Village Board determines that (i) any Owner has failed or refused to discharge properly such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Village Association hereunder, is caused through the willful or negligent act of an Owner, or such Owner's family, guests, tenants, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Village Association, except in the event of an emergency situation, will give such Owner written notice of the Village Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice will set forth with reasonable particularity the maintenance, repairs, or replacement required and will advise the Owner to complete the same within three days from the date of such notice; provided, however, that if the same is not capable of completion within the three day period, such notice will advise the Owner to immediately commence such work which will be completed within a reasonably specified time. If any Owner does not comply with the provisions hereof, the Village Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost will be added to and become a part of the assessment to which such Owner is subject and will become a lien against the Village Lot as provided in Article VIII and elsewhere herein.

**5.3 Excess Costs.** With respect to Village Common Areas, the cost of snow removal, landscaping maintenance, and road maintenance, if any, in excess of amounts budgeted therefor will be paid by the Owners (on the same basis as assessments for Common Expenses are allocated to the Owners at Section 8.3) by a Special Assessment pursuant to Section 8.4. If the Village Association enters into contracts for snow removal, landscaping maintenance, and road maintenance, if any, while Declarant controls the Village Association, the Village Association will indemnify and hold Declarant harmless from all liability and obligations with respect thereto in its capacity as Declarant but not in its capacity as Owner of a Village Lot. This Section is included herein in recognition of the fact that the costs of snow removal, grass mowing, and other maintenance, if any, for the Development may substantially exceed amounts budgeted therefor the Village Association due to inordinate snowfall, an inordinate number of snowfalls

during any season, general weather conditions, agricultural conditions, and amount of use. For the provision of snow removal service and grass mowing in the Village Development, amounts therefor will be included in the Village Association's annual budget and will be collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual costs of such maintenance.

## ARTICLE VI

### INSURANCE

#### 6.1 Insurance.

**6.1.1 Insurance of Village Common Area.** The Village Board, or its duly authorized agent, will have the authority to and will obtain insurance for all insurable improvements on the Village Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance will be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

**6.1.2 Liability Insurance.** The Village Board will also obtain a public liability policy providing coverage to the Village Association and its Members for all damage or injury incurred by any person on the Village Common Area by the negligence of the Village Association or any of its Members or agents. The public liability policy will have at least a \$500,000 single person limit as respects bodily injury and property damage, a \$1,000,000 limit per occurrence, and a \$250,000 minimum property damage limit. Premiums for all insurance on the Village Common Area will be a Common Expenses of the Village Association. The policy may contain a reasonable deductible amount, and the deductible amount thereof will be added to the face amount of the coverage limitations of the policy in determining whether the insurance at least equals the full replacement cost.

**6.1.3 Standards for Insurance.** All such insurance coverage obtained by the Village Board will be written in the name of either the Village Association as trustee or the Ellendale Farm Association as trustee and will add the officers and directors from time to time as additional insureds along with the Village Association and its Members. Such insurance will be governed by the provisions hereinafter set forth:

**6.1.3.1** All policies will be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Size Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;

**6.1.3.2** All policies on the Village Common Area will be for the benefit of the Owners and their Mortgagees as their interests may appear;

**6.1.3.3** Exclusive authority to adjust losses under policies in force on the Village Development obtained by the Village Association will be vested in the Village Board; provided, however, no Mortgagee, if any, having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

**6.1.3.4** In no event will the insurance coverage obtained and maintained by the Village Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

**6.1.3.5** All casualty insurance policies will have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one of more qualified person, at least one of whom must be in the real estate industry and familiar with construction in the Lake County area; and

**6.1.3.6** The Village Board will make every reasonable effort to secure insurance policies that will provide for the following:

(A) a waiver of subrogation of rights by the insurer relative to any claims against the Village Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(B) a waiver by the insurance company of its rights to repair, and reconstruct, instead of paying cash;

(C) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(D) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Village Association or its duly authorized manager without prior notice in writing delivered to the Village Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Village Association, its manager, any Owner, or Mortgagee;

(E) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(F) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Village Association.

**6.1.4 Other Insurance.** In addition to the other insurance required by this Section, the Village Board will obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds with respect to directors, officers, employees, and other persons handling or responsible for the Village Association's funds. The amount of fidelity coverage will be determined in the Village Board's best business judgment, but may not be less than three months assessments, plus reserves on hand. Bonds will contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least 30 days prior written notice to the Village Association.

## **6.2 Individual Insurance.**

**6.2.1 Required Insurance.** By virtue of taking or holding title to a Village Lot which contains a Residential Unit, each Owner covenants and agrees with all other such Owners and with the Village Association that such individual Owner will carry all-risk casualty insurance on such Owner's Residential Unit in an amount of full replacement cost, general liability coverage for a minimum of \$300,000 per occurrence, and \$2,000 medical payment coverage per person. Each such Owner will provide the Village Association with a certificate evidencing such liability coverage when taking title to said Residential Unit. Each such Owner will provide a certificate of insurance evidencing such casualty insurance immediately prior to initiation of construction by said Owner on said Lot or when taking title to such Lot. Such certificates will be furnished upon each renewal date to the Village Association to provide continuous evidence of adequate insurance coverage.

**6.2.2 Rebuilding of Residential Units.** Each Owner of a Residential Unit further covenants and agrees that in the event of total or partial loss, damage or destruction resulting in less than total destruction, such individual Owner will proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. The Village Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Village Lot and the standard for returning the Village Lot.

**6.3 Disbursement of Proceeds.** Proceeds of insurance policies on Village Common Area improvements will be disbursed as follows:

**6.3.1** If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, will be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Village Common Area or, in the event no repair or reconstruction is made, will be retained by and for the benefit of the Village Association and placed in a capital improvements account.

**6.3.2** If it is determined that the damage or destruction to the Village Common Area for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed in the manner as provided for excess proceeds in Section 6.3.1.

**6.4 Damage and Destruction.**

**6.4.1** Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Village Association, the Village Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Development. Repair or reconstruction, as used in this paragraph means repairing or restoring the Development to substantially the same condition in which they existed prior to the fire or other casualty.

**6.4.2** Any damage or destruction to the Village Common Area will be repaired or reconstructed unless at least 75% of the total Eligible Votes decide within 60 days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Village Association within said period, then the period will be extended until such information will be made available; provided, however, such extension will not exceed 60 days. No Mortgagee will have the right to participate in the determination of whether the Village Common Area damage or destruction will be repaired or reconstructed.

**6.4.3** In the event that it should be determined by the Village Association in the manner described above that the damage or destruction of the Village Common Area will not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Development will be restored to its natural state and maintained as an undeveloped portion of the Village Common Area by the Village Association in a neat and attractive condition.

**6.5 Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Village Board will use general funds or seek a special assessment as permitted in Section 8.4.

**ARTICLE VII**

**RIGHTS AND OBLIGATIONS OF THE VILLAGE ASSOCIATION**

**7.1 Village Common Area.** The Village Association, subject to the rights of the Owners set forth in this Supplemental Declaration, will be responsible for the exclusive management and control of the Village Common Area and all improvements thereon (including

furnishings and equipment related thereto, if any), and will keep in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Supplemental Declaration and the By-Laws of the Village Association.

**7.2 Duty To Comply With Easements Benefitting The Development.** Declarant may enter into easement agreements or similar agreements with neighboring land owners for the benefit of the Development. The Village Association will be responsible to fulfill the duties and obligations of Declarant and to protect the rights and interest granted to the Development pursuant to such agreements. Declarant may enter into additional private easements for the benefit of the Development or neighboring land owners. The Village Association will be responsible to fulfill the duties and obligations of Declarant as set forth in any future easements which affect the Development and are entered into by Declarant.

**7.3 Services.** The Village Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Village Association will determine to be necessary or desirable for the property operation of the Development, whether such personnel are furnished or employed directly by the Village Association or by any person or entity with whom or with which it contracts. The Village Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Supplemental Declaration. The Village Association may, but will not be required to, arrange as a Village Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn, and landscaping service and other common services to each Village Lot. The Village Association will provide the services required of it by the Supplemental Declarations, if any.

**7.4 Personal Property and Real Property for Common Use.** The Village Association, through action of the Village Board, may acquire, hold and dispose of tangible and intangible personal property and real property. The Village Board, acting on behalf of the Village Association, will accept any real or personal property, leasehold, or other property interests hereafter annexed into the Development and conveyed to it by Declarant.

**7.5 Implied Rights.** The Village Association may exercise any other right or privilege given to it expressly by this Supplemental Declaration, the Articles of Incorporation, or the By-Laws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**7.6 Self-Help.** In addition to any other remedies provided for herein, the Village Association or its duly authorized agent will have the power to enter upon a Village Lot or any portion of the Village Common Area to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Supplemental Declaration, the First Restated Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Village Board will give the violating

Owner five days written notice of its intent to exercise Village Association remedial activity (self-help). All costs of such Village Association remedial activity (self-help), including attorneys' fees actually incurred will be assessed against the violating Owner and will be collected as provided for herein for the collection of assessments. No liability will be assumed by the Village Association's exercise of such remedial activity.

## ARTICLE VIII

### ASSESSMENTS

**8.1 Purpose of Assessment.** The assessments for the Village Common Area and Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Village Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Village Board, including, but not limited to, any responsibility to maintain grass and perform snow removal and other items upon individual Village Lots as authorized by the Village Board.

#### **8.2 Creation of Assessments.**

**8.2.1** In addition to assessments made by or for the Ellendale Farm Association, there are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Village Board. General assessments and special assessments will be allocated among all Owners of Residential Units or Village Lots which include Residential Units within the Village Association pursuant to Section 8.3 hereof and will be for capital improvements and expenses determined by the Village Board to be for the benefit of the Village Association as a whole or otherwise as provided in this Supplemental Declaration. Each Owner, by acceptance of such Owner's deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law will be a charge on the land and will be a continuing lien upon the Lot against which each assessment is made.

**8.2.2** Each such assessment, together with interest, costs, and reasonable attorneys' fees, will also be the personal obligation of the person or persons who were the Owner(s) of such Residential Unit or Village Lot containing a Residential Unit at the time the assessment arose, and such Owner's grantee will be jointly and severally liable for total unpaid assessments as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Village Lot pursuant to the remedies provided in the Mortgage will be liable for unpaid assessments which accrued prior to such acquisition of title by such lender. Assessments will be paid in such manner and on such dates as may be fixed by the Village Board which may include, without limitation,

monthly, quarterly, semi-annually or annually and acceleration of the annual assessments for delinquents. Unless the Village Board otherwise provides, all assessments will be paid annually within 30 days after the date of the billing.

### **8.3 Computation of Assessment.**

**8.3.1 Budget.** It will be the duty of the Village Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget is to be presented to the membership, to prepare a budget covering the estimated costs of operating the Village Association during the coming year. In accepting bids and/or estimating Common Expenses prior to preparing the budget, the Village Board will separate the Common Expenses to the extent necessary to allocate said expenses among Owners as set forth below. If and to the extent applicable, the budget will include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and will separately list Common Expenses.

**8.3.2 Amount of Assessments.** Common Expenses shall be allocated among Owners in the Development on an equal per Village Lot basis. Where contiguous Village Lots are combined and approved as one building site, the allocated value is "one" Village Lot. Each Owner of any Village Lot or approved combined Village Lot building site (including any Residential Unit) in the Development hereby covenants and agrees to pay to the Village Association a Proportionate Share (as hereinafter defined) of the annual Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Proportionate Share of each Owner in the Development shall be the percentage obtained by dividing "one" by the total number of Village Lots (and/or building sites if contiguous Village Lots are combined) shown on the Plats of the Development as the same may be recorded from time to time and owned by Owners (including Declarant). The Village Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Village Lot for the following year to be delivered to each Owner at least 15 days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting addressing Common Expenses by a vote of at least a two-thirds ( $\frac{2}{3}$ ) majority (present or by proxy) of the total Owners.

**8.3.3 Failure to Approve Budget.** Notwithstanding the foregoing, however, if the Members disapprove the proposed budget or if the Village Board fails for any reason so to determine the budget for the succeeding year, then and until such time as the budget has been determined as provided herein, the budget in effect for the then current year will continue for the succeeding year.

**8.3.4 Deficits.** If the amounts actually expended by the Village Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit will be carried over and become the first item comprising the next year's budget as an additional basis for

assessments for the following fiscal year, except that so long as Declarant controls the Village Association, and subject to Declarant's right to impose Special Assessments as described in Section 4.4 hereof, Declarant will be responsible for such deficit; provided, however, that Declarant will be reimbursed by the Village Association for such deficits, together with interest at 10% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Village Association to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Village Association. If the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Village Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) will be a credit against the assessment(s) due from each Owner for the next fiscal year(s); provided, that Declarant will first be reimbursed for deficits previously paid, with interest, as required above before such excess will be so credited to Owners.

**8.3.5 Limitation on Increases.** In each year thereafter, the total assessments per Village Lot Residential Unit per month for Common Expenses will not be increased by more than the greater of 15% over the prior year or \$200, until such time as Declarant relinquishes control of the Village Association.

**8.4 Special Assessments.** In addition to the other assessments authorized herein, the Village Association may levy special assessments in any year. So long as the total amount of special assessments allocable does not exceed \$200 per Village Lot in any one fiscal year, the Village Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Residential Unit to exceed this limitation will be effective only if approved by a two-thirds ( $\frac{2}{3}$ ) majority of the Eligible Votes, present in person or by proxy. Special assessments will be paid as determined by the Village Board, and the Village Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. This Section 8.4 will not apply to assessments levied pursuant to Section 5.3 hereof.

**8.5 Lien for Assessments.**

**8.5.1** All sums assessed against any Village Lot, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, will be secured by a lien on such Village Lot in favor of the Village Association. Such lien will be recorded by the Village Association with the Lake County Recorder. Such lien will be superior to all other liens and encumbrances on such Village Lot, except for (i) liens of ad valorem taxes or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Lake County, Indiana, and all amounts advanced to such respective Mortgage or Mortgages and secured thereby in accordance with the terms of such instrument.

**8.5.2** All other persons acquiring liens or encumbrances on any Village Lot after this Declaration has been recorded in the Office of the Recorder of Lake County, Indiana, will be deemed to consent that such liens or encumbrances are and will be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**8.6 Effect of Nonpayment of Assessments: Remedies of the Village Association.**

**8.6.1 Lien Rights.** Any assessments which are not paid when due will be delinquent. Any assessment delinquent for a period of more than 10 days will incur a late charge in an amount as the Village Board may from time to time determine. The Village Association will cause a notice of delinquency to be given to any Member who has not paid within 10 days following the due date. If the assessment is not paid within 30 days from the due date, a lien, as herein provided, will attach to the Village Lot and, in addition, the lien will include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid 60 days from the due date, the Village Association may, as the Village Board determines, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Village Association or its agents the right and power to bring all actions against him or her, personally, or all persons or parties in title, jointly and severally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property (*i.e.*, mechanics and materialmen's liens). The lien provided for in this Article will be in favor of the Village Association and will be for the benefit of all other Owners. The Village Association, acting on behalf of the Owners, will have the power to bid on the Village Lot at any foreclosure sale or to acquire and to hold, lease, Mortgage, or convey the Lot. No Owner may waive, purge himself, or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Village Lot.

**8.6.2 Priority of Application of Payment.** All payments will be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

**8.6.3 Suspension of Voting Rights.** If any assessment with respect to any Village Lot is not paid within 30 days from the due date thereof, the Village Board may suspend the voting rights of the delinquent Owner with respect to such Village Lot. Upon and during such suspension, the vote with respect to such Village Lot will not

constitute one of the Eligible Votes. Such voting rights will cease to be suspended when all delinquent assessments with respect to such Owner's Village Lot are paid.

**8.7 Capital Budget and Contribution.** The Village Board will annually prepare a capital budget which will take into account the number and nature of replacement costs for the Village Common Area. The Village Board will set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Village Association as shown on the capital budget, with respect to both amount and timing of need for funds by annual assessments over the period of the budget.

**8.8 Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, will be subordinate to the lien of any first Mortgage upon any Village Lot. The sale or transfer of any Village Lot will not affect the assessment lien. However, the sale or transfer of any Village Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage will extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Village Association to payment out of available foreclosure sale proceeds). No sale or transfer will relieve such Village Lot from lien obligations for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Village Lot obtains title, such Mortgagee's successors and assigns will not be liable for the share of the Common Expenses by the Village Association chargeable to such Village Lot which became due prior to the acquisition of title to such Village Lots by such acquirer. Such unpaid share of Common Expenses will be deemed to be Common Expenses collective from all the Residential Unit or Village Lot which include Residential Units, including such acquirer and all successors and assigns thereof. Such procedure will not discharge the former Owner from personal liability for such unpaid assessment.

**8.9 Capitalization of Village Association.** Upon acquisition of record title to a Village Lot from Declarant, such Owner will contribute to the capital of the Village Association an amount equal to a pro-rated portion of the annual general assessment for Common Expenses for that Village Lot as determined by the Village Board. Such pro-ration will be based upon the remaining portion of the assessment year during which the Owner acquired title.

**8.10 Date of Commencement of Annual Assessments.** The annual assessments authorized by the Village Board or Village Association as provided herein will commence as to each Village Lot on the later of (a) the first day of the month following the conveyance of such Village Lot to an Owner other than the Declarant, or (b) the completion of a Residential Unit on such Village Lot, and will be due and payable in a manner and on a schedule as the Village Board may provide. The first annual assessment will be adjusted according to the number of months then remaining that fiscal year. The date any Village Lot becomes subject to assessment by the Village Board or Village Association will be the date on which assessments commence as to such Village Lot. Nothing hereunder shall be construed to change or affect the creation, date of commencement, or other matters relating to assessments authorized by the Ellendale Farm Association or its board of directors.

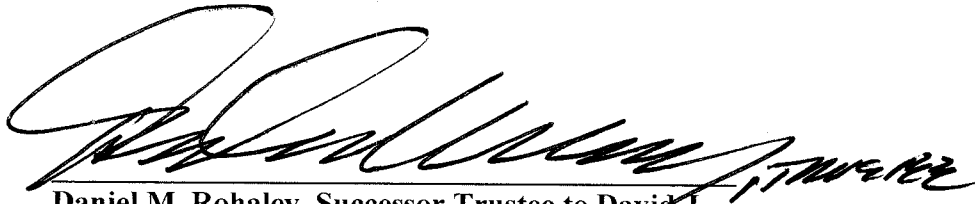
**8.11 Assessments by Declarant.** After the commencement of assessments authorized by the Village Association or the Village Board on any Village Lot, an Owner will be liable for and agrees to pay the full amount of the annual assessment (prorated for partial years, if applicable) for each Residential Unit or Village Lot which include Residential Units which are owned by such Owner. Unless Declarant is an Owner of a Village Lot upon which an occupied Residential Unit is located, Declarant shall not be liable for payment of any assessments upon Village Lots to which Declarant holds title.

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Supplemental Declaration as of the date above.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

18(22)

Declarant:

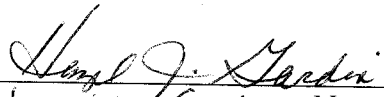


Daniel M. Rohaley, Successor Trustee to David J. Wilcox under Trust Agreement dated July 30, 1996 and known as Trust № 202615-96

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

On this 3 day of April, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Daniel M. Rohaley, Successor Trustee to David J. Wilcox under Trust Agreement dated July 30, 1996 and Trust № 202615-96 and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

  
Hazel J. Gardin, Notary Public

My Commission Expires: 7-1-09  
My County of Residence: Lake

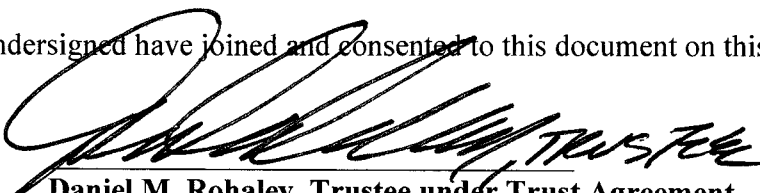
"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."  
PREPARED BY: Jimmy Porter

JOINDER AND CONSENT

The undersigned, being the owners of the above described property in this declaration, hereby joins in this Declaration for purposes of acknowledging and agreeing that such amendments which are made to the Declaration are made with consent of the undersigned.

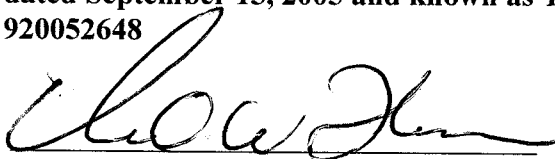
IN WITNESS WHEREOF, the undersigned have joined and consented to this document on this 5 day of ~~March~~ <sup>April</sup>, 2008.

Owner:



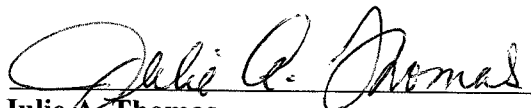
Daniel M. Rohaley, Trustee under Trust Agreement  
dated September 15, 2005 and known as Trust №  
920052648

Owner:



Richard W. Thomas

Owner:



Julie A. Thomas

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

On this 3 day of ~~March~~<sup>April</sup>, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Daniel M. Rohaley, Trustee under the Trust Agreement dated September 15, 2005 and Trust № 920052648, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

Hazel J. Gardin  
Hazel J. Gardin, Notary Public

My Commission Expires: 7-1-09  
My County of Residence: Lake

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

On this 3<sup>rd</sup> day of ~~March~~<sup>APRIL</sup>, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard W. Thomas, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

Cynthia L. Elder  
Cynthia L. Elder, Notary Public

My Commission Expires: 3-6-13  
My County of Residence: LAKE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

On this 3<sup>rd</sup> day of ~~March~~<sup>APRIL</sup>, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Julie A. Thomas, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

Cynthia L. Elder  
Cynthia L. Elder, Notary Public

My Commission Expires: 3-6-13  
My County of Residence: LAKE

## EXHIBIT A

### Legal Description of Village Real Estate - Unit 1

That part of the Northeast 1/4 of Section 18, Township 34 North, Range 8 West of the Second Principal Meridian, bounded and described as follows: COMMENCING at the Southeast corner of said Northeast 1/4 of Section 18; thence North 00 degrees 46 minutes 00 seconds West 701.69 feet along the East line of said Northeast 1/4, to the POINT OF BEGINNING; thence South 89 degrees 14 minutes 00 seconds West 187.41 feet; thence North 00 degrees 46 minutes 00 seconds West 51.75 feet; thence South 89 degrees 14 minutes 00 seconds West 114.76 feet; thence South 80 degrees 11 minutes 49 seconds West 150.00 feet; thence North 09 degrees 48 minutes 11 seconds West 11.89 feet, to a point of curve; thence Northerly 99.36 feet along the arc of a circle of 630.00 feet radius convex Westerly, to a point of tangency; thence North 00 degrees 46 minutes 00 seconds West 178.25 feet; thence South 80 degrees 11 minutes 49 seconds West 159.67 feet; thence North 30 degrees 31 minutes 28 seconds West 216.12 feet; thence Easterly 56.77 feet along the arc of a circle of 370.00 feet radius convex Southerly having a chord bearing of North 55 degrees 04 minutes 46 seconds East, to a point of reverse curve; thence Easterly 195.72 feet along the arc of a circle of 330.00 feet radius convex Northerly, to a point of reverse curve; thence Easterly 157.30 feet along the arc of a circle of 270.00 feet radius convex Southerly, to a point reverse curve; thence Easterly 291.42 feet along the arc of a circle of 440.00 feet radius convex Northerly, to a point of tangency; thence North 89 degrees 14 minutes 00 seconds East 83.54 feet, to the East line of said Northeast 1/4; thence South 00 degrees 46 minutes 00 seconds East 731.64 feet along said East line, to the herein designated POINT OF BEGINNING, in Lake County, Indiana.

This instrument prepared by:  
Jon A. Schmaltz  
Burke Costanza & Cuppy LLP  
57 Franklin, Suite 203  
Valparaiso, Indiana 46383-5670

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document unless required by law.

Jon A. Schmaltz

20

Ellendale Old Town Village

Second Supplemental Declaration  
Of Covenants,  
Conditions, Easements,  
And Restrictions

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**EXHIBIT A**

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Legal Description of Village Real Estate	Exhibit A - Page 1 of 1

## **SECOND SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

This Second Supplemental Declaration of Covenants, Conditions, Easements and Restrictions of Ellendale Old Town Village (“Supplemental Declaration”) is made as of March 21, 2008, by Daniel M. Rohaley, Successor Trustee to David J. Wilcox under Trust Agreement dated July 30, 1996 and known as Trust № 202615-96 (“Declarant”). The parties executing this Supplemental Declaration have submitted their property to Ellendale Farm, which is contained in and includes that property described in Exhibit “A.”

Declarant states as follows:

A. Daniel M. Rohaley, Trustee under Trust Agreement dated September 15, 2005 and known as Trust № 920052648, is the owner of certain real property described in Exhibit “A”, and Richard W. Thomas and Julie A. Thomas, husband and wife, are the owners of Lot 55 located within the real property described in Exhibit “A”, which is attached hereto and made a part hereof (“Village Real Estate”).

B. Declarant established Ellendale Farm, a residential development, and recorded restated covenants on certain property described in such restated covenants recorded in the Lake County Recorder’s Office on June 22, 1998 as Document N° 98046488 (“First Restated Declaration”). This Supplemental Declaration supplements the First Restated Declaration, by incorporating certain terms, conditions, restrictions, and covenants of the First Restated Declaration.

C. Declarant intends by this Supplemental Declaration to impose upon the Village Real Estate and the development contemplated hereby mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners and residents of Residential Units in the development contemplated hereby by executing and recording this Supplemental Declaration. The development created on the Village Real Estate shall be known as Ellendale Old Town Village (“Village” or “Village Development”).

D. Declarant has formed the Ellendale Farm Property Owners’ Association, Inc. as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana (“Ellendale Farm Association”) for the purpose of carrying out the powers and duties set forth herein.

E. Declarant will or has formed the Ellendale Old Town Village Property Owners’ Association, Inc., as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana (“Village Association”) for the purpose of carrying out the powers and duties set forth herein.

F. Declarant intends to convey all or any portion of the Village Common Area in the Village Development in fee simple title, free of financial encumbrances, to the Village

Association subject to easements, restrictions of record and such other conditions as Declarant may at the time of such conveyance deem appropriate.

G. Pursuant to Article VIII and other relevant parts of the First Restated Declaration, Declarant has annexed the Village Real Estate into the Development.

**NOW, THEREFORE**, Declarant hereby declares that all of the Village Real Estate and any additional property as may by subsequent amendment hereto be added and subjected to this Supplemental Declaration will be held, sold, and conveyed subject to the following.

## ARTICLE I

### INCORPORATION OF TERMS

**1.1 Definitions.** Except as otherwise provided, capitalized terms used in this Supplemental Declaration without definition or particular description shall have the meanings given to them in the First Restated Declaration. The provisions of this Supplemental Declaration shall be applied in the context of the Village Association and the Village Development. Capitalized terms that are defined in the First Restated Declaration and apply to the Ellendale Farm Association in the First Restated Declaration shall apply to the Village Association and related terms in this Supplemental Declaration and shall be given meanings consistent with matters relating to the Village Association and related terms.

**1.2 Incorporation.** This Supplemental Declaration is a supplemental declaration. All terms and provisions of the First Restated Declaration, including the Declarant's statements and recitals, are incorporated into this Supplemental Declaration except as otherwise provided herein. However, neither Article XII of the First Restated Declaration nor any provision of the First Restated Declaration pertaining exclusively to Article XII of the First Restated Declaration shall be incorporated into this Supplemental Declaration.

## ARTICLE II

### DEFINITIONS

**2.1 Ellendale Farm Association.** The Ellendale Farm Association means Ellendale Farm Property Owners' Association, Inc.

**2.2 Village Association.** The Village Association means Ellendale Old Town Village Property Owners' Association, Inc.

**2.3 Village Common Area.** The Village Common Area means all portions of the Village Development which have not been designated as Village Lots in the Plat, including any ponds, open space, landscape parcels, streets, street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor

of the Village Association for the common use and enjoyment of the Owners. Outlots A and B as shown on the Plat for the Village are parts of the Village Common Area.

**2.4 Village Development.** The Village Development means the Village Real Estate described on Exhibit “A” and the improvements constructed or to be constructed on it.

**2.5 Village Lot.** A Village Lot is a lot in the Village Development as shown on the Plat.

**2.6 Village Lot.** A Village Lot means a Village Lot.

**2.7 Village Real Estate.** The Village Real Estate is the real estate legally described on Exhibit “A” attached hereto and made a part hereof, and is Additional Land.

**2.8 Landscape Easement.** The easement defined in Section 3.4.1.

**2.9 Wall Easement.** The easement defined in Section 3.4.2.

### ARTICLE III

#### VILLAGE DEVELOPMENT

**3.1 Additional Land.** The Village Development is added to the Development. This Supplemental Declaration applies to the Village Development, except as specifically excluded.

**3.2 Village Association.** In addition to being members of the Ellendale Farm Association, the Owners will have their own property owners’ association. Owners will have membership and voting rights in the Village Association. Except as otherwise provided herein, the Village Association will be administered on the same terms as the Ellendale Farm Association.

**3.3 Exterior Maintenance.** In addition to the maintenance upon the Village Common Areas, the Village Association will provide exterior services upon each Village Lot which is subject to assessment hereunder by (1) removing snow and ice from walkways and driveways, (2) installing and maintaining grass lawns and installing and maintaining landscape areas within the Landscape Easement, (3) installing and maintaining the landscape wall on the Wall Easement, and (4) performing any other maintenance duties authorized by the Village Board (as hereinafter defined); however, the Village Association shall not be required to maintain any other improvements, trees, shrubs, or landscaping upon any Village Lot. The Village Association shall be responsible for no other exterior maintenance upon Village Lots, except as otherwise provided herein. The Village Board shall have the sole authority and discretion to determine when and in what manner maintenance duties shall be performed. If the need for maintenance or repair is caused through the willful or negligent act of the owner, his

family, or guest, or invitees, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Village Lot is subject.

**3.4 Additional Easements.** The Village Association has responsibility for installing certain improvements and maintaining certain portions of a Village Lot as will be described in this Section. The areas described will be maintained and controlled by the Village Association. For the purpose of installing improvements and maintaining such improvements on these areas, the following easements are created.

**3.4.1 Landscape Easement.** Declarant retains for itself and declares and grants an easement to the Village Association over the front portion of each Village Lot extending to the front exterior of each Residential Unit, for the purpose of maintaining landscaping improvements, including but not limited to watering systems, and vegetation including the right of access to such lands and adjacent lands reasonably necessary for such installation and maintenance. The Owner will install such improvements and landscaping within the landscape easement that it deems appropriate from time to time.

**3.4.2 Wall Easement.** Declarant retains for itself and declares and grants to the Village Association an easement 16 feet wide, eight feet on each side of the property lines within the lawn areas located on a Village Lot (“Wall Easement”) for the purpose of installing and maintaining a landscape wall, including the right of access to such lands and adjacent lands reasonably necessary for such installation and maintenance. The Owner will install a landscape wall within the Wall Easement approximately centered on the Wall Easement constructed of brick, masonry, stone, or other similar materials as approved by Declarant. The Village Association will construct and maintain the landscape wall as it deems appropriate from time to time and may, in its discretion, alter or remove the landscape wall.

**3.4.3 Private Roads.** Declarant has delineated on the Plat alleys for the benefit of the Village. The Village Association will maintain the alleys as Village Common Areas pursuant to this Supplemental Declaration.

**3.4.4 Administration as Village Common Areas.** The Landscape Easement and the Wall Easement and the improvements thereon will be administered, maintained, controlled, and operated as Village Common Areas except that access to the Landscape Easement and the Wall Easement shall be limited only to the Village Association for the purpose of fulfilling its responsibilities under this Supplemental Declaration and the Owner on which the said easements are located, its guests and invitees. The Village Association shall assess the expenses of these activities to the Owners as Common Area Expenses. No other members of the public or property owners within Ellendale Farm shall have a right of access to the Landscape Easement or the Wall Easement as provided for other Village Common Areas in this Supplemental Declaration except as guests and invitees of the Owners of the Village Lot on which the Landscape Easement and Wall Easement exists. An Owner shall not construct improvements or alter existing

improvements or landscaping on the Wall Easement or the Landscape Easement without the written consent of the Village Association.

**3.5 Architectural Standards.** Notwithstanding anything to the contrary, Declarant or Declarant's designee or appointee, and neither the Ellendale Farm Association, the Board, nor the Village Association or its board of directors, shall have all power, authority, jurisdiction, and control over all Construction on all Village Lots. Such authority of Declarant or Declarant's designee shall be exercised in a manner consistent with that granted to the Ellendale Farm Association and the Board under Article XI of the First Restated Declaration.

**3.6 Encroachment Easement.** If (a) any portion of the Village Common Areas encroaches upon any Residential Unit or upon any other Village Common Area, (b) any Residential Unit encroaches upon any other Residential Unit or upon any portion of the Village Common Areas or (c) any such encroachments shall hereafter occur as a result of (i) settling or shifting of any improvements, (ii) any alteration, repair, or restoration of the Village Common Areas made by or with the consent (when required by the By-Laws) of the Village Association, or made by Declarant or its designee, or (iii) any alteration, repair, or restoration of improvements (or any portion thereof) or of any Residential Unit or Village Common Area after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all any portion of any Residential Unit or the Village Common Areas; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same as long as the improvements shall stand.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS

**4.1 Membership.** In addition to being a member of the Ellendale Farm Association, every Owner will be a member of the Village Association. Membership will be appurtenant to and may not be separated from ownership of a Village Lot.

**4.2 Classes of Membership and Voting Rights.** The Village Association will have one class of voting membership which will be comprised of all owners in the Village Development, without regard to whether there are Residential Units on such Owners' Village Lots. Each Owner will hold one membership for each Village Lot owned and will be entitled to one vote for each Village Lot owned, except as provided in Section 8.6.3 hereof. When more than one person holds an interest in any Village Lot, all such persons will be members. The vote for such Village Lot will be exercised as such co-owners among themselves determine evidenced by a certificate signed by all such Owners filed with the Village Association. Such signed certificate will also be conclusive with respect to voting rights of an Owner in instances where such Owner's voting is referred to in this Supplemental Declaration. In no such event will more than one vote be cast with respect to any Village Lot either with respect to Village Association membership or Village Lot ownership.

**4.3 Board of Directors.** The Members will elect a Board of Directors of the Village Association (“Village Board”) as prescribed by the Village Association’s By-Laws. There will be three members of the initial Village Board, and subsequent Village Boards will have such numbers of members as may be provided in the By-Laws, provided that the By-Laws will not provide for less than three members of the Village Board. The Village Board will manage the affairs of the Village Association. The initial Village Board will be appointed by Declarant and will manage the affairs of the Village Association until Declarant transfers control of the Village Association to the Owners as required herein at Section 4.5 herein.

**4.4 Responsibilities of the Village Association.** The Village Association is hereby authorized to maintain, repair, and replace the Village Common Area, to determine Common Expenses, to collect annual and special assessments, and to grant any approvals whenever and to the extent called for by this Supplemental Declaration for the common benefit of all such Owners. The Village Association will also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Supplemental Declaration. Neither the Village Association nor its officers or authorized agents will have any liability whatsoever to any Owner for any action taken under color of authority of this Supplemental Declaration as for any failure to take any action called for by this Supplemental Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Village Association will procure and maintain casualty insurance for the Village Common Area, liability insurance (including directors’ and officers’ insurance) and such other insurance as it deems necessary or advisable. The Village Association may contract for such services as management, snow removal, security control, lawn care, trash removal, exterior maintenance and repair and such other services as the Village Association deems necessary or advisable.

**4.5 Control and Transfer of Control of Village Association.** During the development and construction stages of the Village Development and for so much of selling period as described hereinafter, the Village Association will be operated and controlled by Declarant. The Village Board will, during such period, consist of persons appointed by Declarant, and each Owner will give and will be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owner is entitled to vote under this Supplemental Declaration, any subsequent supplemental declaration, or under the Articles of Incorporation or the By-Laws of the Village Association.

The control of the Village Association will be transferred to the Owners (which includes Declarant with respect to each unsold Village Lot) 120 days after the date on which Declarant no longer owns any portion of the Village Development platted, to be platted, or to be annexed, as then ascertained, or on such earlier date as Declarant, in its discretion, may determine.

## ARTICLE V

### COMMON MAINTENANCE

**5.1 Maintenance by Village Association.** In addition to the requirements of Article III hereunder, the Village Association will maintain and keep in good repair the Village Common Areas and such other areas that it deems necessary and advisable for the benefit of the Village Development. The maintenance of the Village Common Area will be deemed to include, but not to be limited to, maintenance, repair, and replacement (subject to later reimbursement from the insurance and casualty loss provisions contained at the Village Association's sole cost and expense as Common Expense) of all of the following located on the Village Common Area: trees, fences, shrubs, grass, signs, Village Common Area access and parking spaces, if any, walks, trails, pedestrian bridges, Drainage System improvements solely dedicated to the Village Development (unless contracted otherwise to a public agency), the Village Common Area lighting and watering systems and other improvements situated upon the Village Common Area. The Village Association may, at its discretion, leave appropriate portions of the Village Common Area unmaintained to produce a "natural effect" for a natural habitat.

**5.2 Liabilities of Owners.** If the Village Board determines that (i) any Owner has failed or refused to discharge properly such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Village Association hereunder, is caused through the willful or negligent act of an Owner, or such Owner's family, guests, tenants, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Village Association, except in the event of an emergency situation, will give such Owner written notice of the Village Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice will set forth with reasonable particularity the maintenance, repairs, or replacement required and will advise the Owner to complete the same within three days from the date of such notice; provided, however, that if the same is not capable of completion within the three day period, such notice will advise the Owner to immediately commence such work which will be completed within a reasonably specified time. If any Owner does not comply with the provisions hereof, the Village Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost will be added to and become a part of the assessment to which such Owner is subject and will become a lien against the Village Lot as provided in Article VIII and elsewhere herein.

**5.3 Excess Costs.** With respect to Village Common Areas, the cost of snow removal, landscaping maintenance, and road maintenance, if any, in excess of amounts budgeted therefor will be paid by the Owners (on the same basis as assessments for Common Expenses are allocated to the Owners at Section 8.3) by a Special Assessment pursuant to Section 8.4. If the Village Association enters into contracts for snow removal, landscaping maintenance, and road maintenance, if any, while Declarant controls the Village Association, the Village Association will indemnify and hold Declarant harmless from all liability and obligations with respect thereto in its capacity as Declarant but not in its capacity as Owner of a Village Lot. This Section is included herein in recognition of the fact that the costs of snow removal, grass mowing, and other maintenance, if any, for the Development may substantially exceed amounts budgeted therefor the Village Association due to inordinate snowfall, an inordinate number of snowfalls

during any season, general weather conditions, agricultural conditions, and amount of use. For the provision of snow removal service and grass mowing in the Village Development, amounts therefor will be included in the Village Association's annual budget and will be collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual costs of such maintenance.

## **ARTICLE VI**

### **INSURANCE**

#### **6.1 Insurance.**

**6.1.1 Insurance of Village Common Area.** The Village Board, or its duly authorized agent, will have the authority to and will obtain insurance for all insurable improvements on the Village Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance will be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

**6.1.2 Liability Insurance.** The Village Board will also obtain a public liability policy providing coverage to the Village Association and its Members for all damage or injury incurred by any person on the Village Common Area by the negligence of the Village Association or any of its Members or agents. The public liability policy will have at least a \$500,000 single person limit as respects bodily injury and property damage, a \$1,000,000 limit per occurrence, and a \$250,000 minimum property damage limit. Premiums for all insurance on the Village Common Area will be a Common Expenses of the Village Association. The policy may contain a reasonable deductible amount, and the deductible amount thereof will be added to the face amount of the coverage limitations of the policy in determining whether the insurance at least equals the full replacement cost.

**6.1.3 Standards for Insurance.** All such insurance coverage obtained by the Village Board will be written in the name of either the Village Association as trustee or the Ellendale Farm Association as trustee and will add the officers and directors from time to time as additional insureds along with the Village Association and its Members. Such insurance will be governed by the provisions hereinafter set forth:

**6.1.3.1** All policies will be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Size Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;

**6.1.3.2** All policies on the Village Common Area will be for the benefit of the Owners and their Mortgagees as their interests may appear;

**6.1.3.3** Exclusive authority to adjust losses under policies in force on the Village Development obtained by the Village Association will be vested in the Village Board; provided, however, no Mortgagee, if any, having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

**6.1.3.4** In no event will the insurance coverage obtained and maintained by the Village Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

**6.1.3.5** All casualty insurance policies will have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one of more qualified person, at least one of whom must be in the real estate industry and familiar with construction in the Lake County area; and

**6.1.3.6** The Village Board will make every reasonable effort to secure insurance policies that will provide for the following:

(A) a waiver of subrogation of rights by the insurer relative to any claims against the Village Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(B) a waiver by the insurance company of its rights to repair, and reconstruct, instead of paying cash;

(C) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(D) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Village Association or its duly authorized manager without prior notice in writing delivered to the Village Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Village Association, its manager, any Owner, or Mortgagee;

(E) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(F) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Village Association.

**6.1.4 Other Insurance.** In addition to the other insurance required by this Section, the Village Board will obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds with respect to directors, officers, employees, and other persons handling or responsible for the Village Association's funds. The amount of fidelity coverage will be determined in the Village Board's best business judgment, but may not be less than three months assessments, plus reserves on hand. Bonds will contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least 30 days prior written notice to the Village Association.

## **6.2 Individual Insurance.**

**6.2.1 Required Insurance.** By virtue of taking or holding title to a Village Lot which contains a Residential Unit, each Owner covenants and agrees with all other such Owners and with the Village Association that such individual Owner will carry all-risk casualty insurance on such Owner's Residential Unit in an amount of full replacement cost, general liability coverage for a minimum of \$300,000 per occurrence, and \$2,000 medical payment coverage per person. Each such Owner will provide the Village Association with a certificate evidencing such liability coverage when taking title to said Residential Unit. Each such Owner will provide a certificate of insurance evidencing such casualty insurance immediately prior to initiation of construction by said Owner on said Lot or when taking title to such Lot. Such certificates will be furnished upon each renewal date to the Village Association to provide continuous evidence of adequate insurance coverage.

**6.2.2 Rebuilding of Residential Units.** Each Owner of a Residential Unit further covenants and agrees that in the event of total or partial loss, damage or destruction resulting in less than total destruction, such individual Owner will proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. The Village Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Village Lot and the standard for returning the Village Lot.

**6.3 Disbursement of Proceeds.** Proceeds of insurance policies on Village Common Area improvements will be disbursed as follows:

**6.3.1** If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, will be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Village Common Area or, in the event no repair or reconstruction is made, will be retained by and for the benefit of the Village Association and placed in a capital improvements account.

**6.3.2** If it is determined that the damage or destruction to the Village Common Area for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed in the manner as provided for excess proceeds in Section 6.3.1.

#### **6.4 Damage and Destruction.**

**6.4.1** Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Village Association, the Village Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Development. Repair or reconstruction, as used in this paragraph means repairing or restoring the Development to substantially the same condition in which they existed prior to the fire or other casualty.

**6.4.2** Any damage or destruction to the Village Common Area will be repaired or reconstructed unless at least 75% of the total Eligible Votes decide within 60 days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Village Association within said period, then the period will be extended until such information will be made available; provided, however, such extension will not exceed 60 days. No Mortgagee will have the right to participate in the determination of whether the Village Common Area damage or destruction will be repaired or reconstructed.

**6.4.3** In the event that it should be determined by the Village Association in the manner described above that the damage or destruction of the Village Common Area will not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Development will be restored to its natural state and maintained as an undeveloped portion of the Village Common Area by the Village Association in a neat and attractive condition.

**6.5 Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Village Board will use general funds or seek a special assessment as permitted in Section 8.4.

## **ARTICLE VII**

### **RIGHTS AND OBLIGATIONS OF THE VILLAGE ASSOCIATION**

**7.1 Village Common Area.** The Village Association, subject to the rights of the Owners set forth in this Supplemental Declaration, will be responsible for the exclusive management and control of the Village Common Area and all improvements thereon (including

furnishings and equipment related thereto, if any), and will keep in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Supplemental Declaration and the By-Laws of the Village Association.

**7.2 Duty To Comply With Easements Benefitting The Development.** Declarant may enter into easement agreements or similar agreements with neighboring land owners for the benefit of the Development. The Village Association will be responsible to fulfill the duties and obligations of Declarant and to protect the rights and interest granted to the Development pursuant to such agreements. Declarant may enter into additional private easements for the benefit of the Development or neighboring land owners. The Village Association will be responsible to fulfill the duties and obligations of Declarant as set forth in any future easements which affect the Development and are entered into by Declarant.

**7.3 Services.** The Village Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Village Association will determine to be necessary or desirable for the property operation of the Development, whether such personnel are furnished or employed directly by the Village Association or by any person or entity with whom or with which it contracts. The Village Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Supplemental Declaration. The Village Association may, but will not be required to, arrange as a Village Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn, and landscaping service and other common services to each Village Lot. The Village Association will provide the services required of it by the Supplemental Declarations, if any.

**7.4 Personal Property and Real Property for Common Use.** The Village Association, through action of the Village Board, may acquire, hold and dispose of tangible and intangible personal property and real property. The Village Board, acting on behalf of the Village Association, will accept any real or personal property, leasehold, or other property interests hereafter annexed into the Development and conveyed to it by Declarant.

**7.5 Implied Rights.** The Village Association may exercise any other right or privilege given to it expressly by this Supplemental Declaration, the Articles of Incorporation, or the By-Laws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**7.6 Self-Help.** In addition to any other remedies provided for herein, the Village Association or its duly authorized agent will have the power to enter upon a Village Lot or any portion of the Village Common Area to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Supplemental Declaration, the First Restated Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Village Board will give the violating

Owner five days written notice of its intent to exercise Village Association remedial activity (self-help). All costs of such Village Association remedial activity (self-help), including attorneys' fees actually incurred will be assessed against the violating Owner and will be collected as provided for herein for the collection of assessments. No liability will be assumed by the Village Association's exercise of such remedial activity.

## **ARTICLE VIII**

### **ASSESSMENTS**

**8.1 Purpose of Assessment.** The assessments for the Village Common Area and Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Village Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Village Board, including, but not limited to, any responsibility to maintain grass and perform snow removal and other items upon individual Village Lots as authorized by the Village Board.

#### **8.2 Creation of Assessments.**

**8.2.1** In addition to assessments made by or for the Ellendale Farm Association, there are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Village Board. General assessments and special assessments will be allocated among all Owners of Residential Units or Village Lots which include Residential Units within the Village Association pursuant to Section 8.3 hereof and will be for capital improvements and expenses determined by the Village Board to be for the benefit of the Village Association as a whole or otherwise as provided in this Supplemental Declaration. Each Owner, by acceptance of such Owner's deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law will be a charge on the land and will be a continuing lien upon the Lot against which each assessment is made.

**8.2.2** Each such assessment, together with interest, costs, and reasonable attorneys' fees, will also be the personal obligation of the person or persons who were the Owner(s) of such Residential Unit or Village Lot containing a Residential Unit at the time the assessment arose, and such Owner's grantee will be jointly and severally liable for total unpaid assessments as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Village Lot pursuant to the remedies provided in the Mortgage will be liable for unpaid assessments which accrued prior to such acquisition of title by such lender. Assessments will be paid in such manner and on such dates as may be fixed by the Village Board which may include, without limitation,

monthly, quarterly, semi-annually or annually and acceleration of the annual assessments for delinquents. Unless the Village Board otherwise provides, all assessments will be paid annually within 30 days after the date of the billing.

### **8.3 Computation of Assessment.**

**8.3.1 Budget.** It will be the duty of the Village Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget is to be presented to the membership, to prepare a budget covering the estimated costs of operating the Village Association during the coming year. In accepting bids and/or estimating Common Expenses prior to preparing the budget, the Village Board will separate the Common Expenses to the extent necessary to allocate said expenses among Owners as set forth below. If and to the extent applicable, the budget will include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and will separately list Common Expenses.

**8.3.2 Amount of Assessments.** Common Expenses shall be allocated among Owners in the Development on an equal per Village Lot basis. Where contiguous Village Lots are combined and approved as one building site, the allocated value is “one” Village Lot. Each Owner of any Village Lot or approved combined Village Lot building site (including any Residential Unit) in the Development hereby covenants and agrees to pay to the Village Association a Proportionate Share (as hereinafter defined) of the annual Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Proportionate Share of each Owner in the Development shall be the percentage obtained by dividing “one” by the total number of Village Lots (and/or building sites if contiguous Village Lots are combined) shown on the Plats of the Development as the same may be recorded from time to time and owned by Owners (including Declarant). The Village Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Village Lot for the following year to be delivered to each Owner at least 15 days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting addressing Common Expenses by a vote of at least a two-thirds ( $\frac{2}{3}$ ) majority (present or by proxy) of the total Owners.

**8.3.3 Failure to Approve Budget.** Notwithstanding the foregoing, however, if the Members disapprove the proposed budget or if the Village Board fails for any reason so to determine the budget for the succeeding year, then and until such time as the budget has been determined as provided herein, the budget in effect for the then current year will continue for the succeeding year.

**8.3.4 Deficits.** If the amounts actually expended by the Village Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit will be carried over and become the first item comprising the next year’s budget as an additional basis for

assessments for the following fiscal year, except that so long as Declarant controls the Village Association, and subject to Declarant's right to impose Special Assessments as described in Section 4.4 hereof, Declarant will be responsible for such deficit; provided, however, that Declarant will be reimbursed by the Village Association for such deficits, together with interest at 10% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Village Association to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Village Association. If the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Village Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) will be a credit against the assessment(s) due from each Owner for the next fiscal year(s); provided, that Declarant will first be reimbursed for deficits previously paid, with interest, as required above before such excess will be so credited to Owners.

**8.3.5 Limitation on Increases.** In each year thereafter, the total assessments per Village Lot Residential Unit per month for Common Expenses will not be increased by more than the greater of 15% over the prior year or \$200, until such time as Declarant relinquishes control of the Village Association.

**8.4 Special Assessments.** In addition to the other assessments authorized herein, the Village Association may levy special assessments in any year. So long as the total amount of special assessments allocable does not exceed \$200 per Village Lot in any one fiscal year, the Village Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Residential Unit to exceed this limitation will be effective only if approved by a two-thirds ( $\frac{2}{3}$ ) majority of the Eligible Votes, present in person or by proxy. Special assessments will be paid as determined by the Village Board, and the Village Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. This Section 8.4 will not apply to assessments levied pursuant to Section 5.3 hereof.

**8.5 Lien for Assessments.**

**8.5.1** All sums assessed against any Village Lot, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, will be secured by a lien on such Village Lot in favor of the Village Association. Such lien will be recorded by the Village Association with the Lake County Recorder. Such lien will be superior to all other liens and encumbrances on such Village Lot, except for (i) liens of ad valorem taxes or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Lake County, Indiana, and all amounts advanced to such respective Mortgage or Mortgages and secured thereby in accordance with the terms of such instrument.

**8.5.2** All other persons acquiring liens or encumbrances on any Village Lot after this Declaration has been recorded in the Office of the Recorder of Lake County, Indiana, will be deemed to consent that such liens or encumbrances are and will be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**8.6 Effect of Nonpayment of Assessments: Remedies of the Village Association.**

**8.6.1 Lien Rights.** Any assessments which are not paid when due will be delinquent. Any assessment delinquent for a period of more than 10 days will incur a late charge in an amount as the Village Board may from time to time determine. The Village Association will cause a notice of delinquency to be given to any Member who has not paid within 10 days following the due date. If the assessment is not paid within 30 days from the due date, a lien, as herein provided, will attach to the Village Lot and, in addition, the lien will include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid 60 days from the due date, the Village Association may, as the Village Board determines, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Village Association or its agents the right and power to bring all actions against him or her, personally, or all persons or parties in title, jointly and severally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property (*i.e.*, mechanics and materialmen's liens). The lien provided for in this Article will be in favor of the Village Association and will be for the benefit of all other Owners. The Village Association, acting on behalf of the Owners, will have the power to bid on the Village Lot at any foreclosure sale or to acquire and to hold, lease, Mortgage, or convey the Lot. No Owner may waive, purge himself, or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Village Lot.

**8.6.2 Priority of Application of Payment.** All payments will be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

**8.6.3 Suspension of Voting Rights.** If any assessment with respect to any Village Lot is not paid within 30 days from the due date thereof, the Village Board may suspend the voting rights of the delinquent Owner with respect to such Village Lot. Upon and during such suspension, the vote with respect to such Village Lot will not

constitute one of the Eligible Votes. Such voting rights will cease to be suspended when all delinquent assessments with respect to such Owner's Village Lot are paid.

**8.7 Capital Budget and Contribution.** The Village Board will annually prepare a capital budget which will take into account the number and nature of replacement costs for the Village Common Area. The Village Board will set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Village Association as shown on the capital budget, with respect to both amount and timing of need for funds by annual assessments over the period of the budget.

**8.8 Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, will be subordinate to the lien of any first Mortgage upon any Village Lot. The sale or transfer of any Village Lot will not affect the assessment lien. However, the sale or transfer of any Village Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage will extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Village Association to payment out of available foreclosure sale proceeds). No sale or transfer will relieve such Village Lot from lien obligations for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Village Lot obtains title, such Mortgagee's successors and assigns will not be liable for the share of the Common Expenses by the Village Association chargeable to such Village Lot which became due prior to the acquisition of title to such Village Lots by such acquirer. Such unpaid share of Common Expenses will be deemed to be Common Expenses collective from all the Residential Unit or Village Lot which include Residential Units, including such acquirer and all successors and assigns thereof. Such procedure will not discharge the former Owner from personal liability for such unpaid assessment.

**8.9 Capitalization of Village Association.** Upon acquisition of record title to a Village Lot from Declarant, such Owner will contribute to the capital of the Village Association an amount equal to a pro-rated portion of the annual general assessment for Common Expenses for that Village Lot as determined by the Village Board. Such pro-ration will be based upon the remaining portion of the assessment year during which the Owner acquired title.

**8.10 Date of Commencement of Annual Assessments.** The annual assessments authorized by the Village Board or Village Association as provided herein will commence as to each Village Lot on the later of (a) the first day of the month following the conveyance of such Village Lot to an Owner other than the Declarant, or (b) the completion of a Residential Unit on such Village Lot, and will be due and payable in a manner and on a schedule as the Village Board may provide. The first annual assessment will be adjusted according to the number of months then remaining that fiscal year. The date any Village Lot becomes subject to assessment by the Village Board or Village Association will be the date on which assessments commence as to such Village Lot. Nothing hereunder shall be construed to change or affect the creation, date of commencement, or other matters relating to assessments authorized by the Ellendale Farm Association or its board of directors.

**8.11 Assessments by Declarant.** After the commencement of assessments authorized by the Village Association or the Village Board on any Village Lot, an Owner will be liable for and agrees to pay the full amount of the annual assessment (prorated for partial years, if applicable) for each Residential Unit or Village Lot which include Residential Units which are owned by such Owner. Unless Declarant is an Owner of a Village Lot upon which an occupied Residential Unit is located, Declarant shall not be liable for payment of any assessments upon Village Lots to which Declarant holds title.

**IN WITNESS WHEREOF**, the undersigned Declarant has executed this Supplemental Declaration as of the date above.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**Declarant:**

**Daniel M. Rohaley, Successor Trustee to David J. Wilcox under Trust Agreement dated July 30, 1996 and known as Trust № 202615-96**

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF LAKE        )

On this \_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Daniel M. Rohaley, Successor Trustee to David J. Wilcox under Trust Agreement dated July 30, 1996 and Trust № 202615-96 and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
, Notary Public

My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_

JOINDER AND CONSENT

The undersigned, being the owners of the above described property in this declaration, hereby joins in this Declaration for purposes of acknowledging and agreeing that such amendments which are made to the Declaration are made with consent of the undersigned.

IN WITNESS WHEREOF, the undersigned have joined and consented to this document on this \_\_\_\_ day of \_\_\_\_\_, 2008.

**Owner:**

\_\_\_\_\_  
**Daniel M. Rohaley, Trustee under Trust Agreement  
dated September 15, 2005 and known as Trust №  
920052648**

**Owner:**

\_\_\_\_\_  
**Richard W. Thomas**

**Owner:**

\_\_\_\_\_  
**Julie A. Thomas**

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

On this \_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Daniel M. Rohaley, Trustee under the Trust Agreement dated September 15, 2005 and Trust № 920052648, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
, Notary Public

My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

On this \_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard W. Thomas, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
, Notary Public

My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

On this \_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Julie A. Thomas, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
, Notary Public

My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_

## EXHIBIT A

### Legal Description of Village Real Estate - Unit 1

That part of the Northeast 1/4 of Section 18, Township 34 North, Range 8 West of the Second Principal Meridian, bounded and described as follows: COMMENCING at the Southeast corner of said Northeast 1/4 of Section 18; thence North 00 degrees 46 minutes 00 seconds West 701.69 feet along the East line of said Northeast 1/4, to the POINT OF BEGINNING; thence South 89 degrees 14 minutes 00 seconds West 187.41 feet; thence North 00 degrees 46 minutes 00 seconds West 51.75 feet; thence South 89 degrees 14 minutes 00 seconds West 114.76 feet; thence South 80 degrees 11 minutes 49 seconds West 150.00 feet; thence North 09 degrees 48 minutes 11 seconds West 11.89 feet, to a point of curve; thence Northerly 99.36 feet along the arc of a circle of 630.00 feet radius convex Westerly, to a point of tangency; thence North 00 degrees 46 minutes 00 seconds West 178.25 feet; thence South 80 degrees 11 minutes 49 seconds West 159.67 feet; thence North 30 degrees 31 minutes 28 seconds West 216.12 feet; thence Easterly 56.77 feet along the arc of a circle of 370.00 feet radius convex Southerly having a chord bearing of North 55 degrees 04 minutes 46 seconds East, to a point of reverse curve; thence Easterly 195.72 feet along the arc of a circle of 330.00 feet radius convex Northerly, to a point of reverse curve; thence Easterly 157.30 feet along the arc of a circle of 270.00 feet radius convex Southerly, to a point reverse curve; thence Easterly 291.42 feet along the arc of a circle of 440.00 feet radius convex Northerly, to a point of tangency; thence North 89 degrees 14 minutes 00 seconds East 83.54 feet, to the East line of said Northeast 1/4; thence South 00 degrees 46 minutes 00 seconds East 731.64 feet along said East line, to the herein designated POINT OF BEGINNING, in Lake County, Indiana.

This instrument prepared by:  
Jon A. Schmaltz  
Burke Costanza & Cuppy LLP  
57 Franklin, Suite 203  
Valparaiso, Indiana 46383-5670

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document unless required by law.

Jon A. Schmaltz