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2011-016931

STATE OF INDIANA  
PORTER COUNTY  
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JOH C. MILLER  
RECORDER

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# THE VILLAGE IN BURNS HARBOR

## FIRST AMENDED, SUPPLEMENTED AND RESTATED DECLARATION OF CODES, COVENANTS, AND EASEMENTS

THIS FIRST AMENDED, SUPPLEMENTED AND RESTATED DECLARATION OF CODES, COVENANTS, and EASEMENTS ("Amendment and Supplement") is made this 29th day of July, 2011 by the Village in Burns Harbor Property Owners Association, Inc., an Indiana not-for-profit corporation on behalf of the Owners (the "Association" or "Owners") as to the amendments requiring approval of 2/3 of the Owners as described hereinbelow, and BH, LLC, by its Manager, T. Clifford Fleming, (the "Founder") as to the amendments requiring the consent of the Founder and as to the additional real property that Founder is subjecting to the provisions of the Declaration; the Owners and the Founder, collectively being the owners of all the property that is subject to the Declaration, as defined hereinbelow.

WITNESSETH:

WHEREAS, The Village in Burns Harbor Declaration of Codes, Covenants and Easements, dated September 8, 2003 was recorded January 12, 2004 in the Office of the Recorder of Porter County, Indiana, as Document No. 2004-001002 (as amended from time to time, the "Declaration"); and

WHEREAS, certain property was subjected to the Declaration, as more particularly described in the Declaration and in the plats recorded in Plat File 45-E-6 as follows: Phase 1A recorded on January 12, 2004 as Document No. 2004-001001; Phase 1B recorded on July 26, 2004 as Document No. 2004-024388; Phase 2 recorded on September 15, 2006 as Document No. 2006-028019; and Phase 3 recorded on May 14, 2008 as Document No. 2008-013307, all in the

✓ shelf

Office of the Recorder of Porter County, Indiana (collectively, the "Neighborhood"). The legal description for the Neighborhood is attached hereto as Exhibit "A" and/or included in the above referenced plats for Phases 1A, 1B, 2, and 3; and

WHEREAS, the Declaration provides, in pertinent part, that the Founder has the right to subject additional real property to the provisions of the Declaration; and

WHEREAS, the Founder desires to subject that certain real property more particularly described on Exhibit B, attached hereto and incorporated herein, to the Declaration as "Additional Real Property Subject to the Declaration"; and

WHEREAS, pursuant to Article VI of the Declaration, the Declaration may be amended at any time by an instrument signed by the President or Vice President and Secretary of the Association, certifying approval in writing by Parcel Owners representing two-thirds (2/3) of the votes in the Association as provided for in the Village Book. Rights reserved to the Founder may not be amended without the specific consent of the Founder; and

WHEREAS, more than 2/3 of the Owners have affirmatively voted or otherwise given written consent to the amendments described herein, and the Owners, mortgagees, occupants, and other persons or entities acquiring any interest in the property described in the Declaration shall hold their interest subject to the rights, easements, privileges, and restrictions hereinafter set forth and contained in this Declaration; and

NOW THEREFORE, this Amendment is executed and placed of record in the Office of the Recorder of Porter County, Indiana to amend, modify, supplement and restate the Declaration as follows:

#### STATEMENT OF PURPOSE:

A. The Founder is developing upon real property in the Town of Burns Harbor, in Porter County, Indiana, a traditional neighborhood development to be known as the Village in Burns Harbor (the "Village"). The Village will include approximately fifty-seven (57) acres, as described in Exhibit C (the "Master Plan Area").

B. The Founder recorded this Declaration, subjected the Neighborhood property to the Declaration and established a property owners' association to enhance community life, to institute and enforce certain covenants and restrictions, to provide for further maintenance of the community and to allow for self-governing of the Neighborhood by its owners.

## DECLARATION:

The Founder was the owner of all the property described in Exhibit A (the "Neighborhood"), when it submitted the Neighborhood to this Declaration of Codes, Covenants and Easements; and declared that the property comprising the Neighborhood shall be held, sold and conveyed subject to the covenants, restrictions and easements of this Declaration, which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Neighborhood.

The additional real property described in Exhibit B is now hereby made part of the Neighborhood, as defined in the Declaration and is and shall be held, transferred, sold, conveyed and occupied subject to the Declaration and is hereby subjected to the covenants, easements, rights, liens, conditions, restrictions and reservations set forth therein.

The Village in Burns Harbor Book of Operating Principles (the "Village Book") is attached as Exhibit D to this Declaration and is hereby incorporated by reference. The Village Book's provisions include but are not limited to the following:

- Maintenance of the Commons within the Village;
- Operation of The Village in Burns Harbor Property Owners Association, Inc.;
- Architectural control;
- Covenants and easements for the Village;
- Establishment of mandatory assessments; and
- Reservation of certain Founder's rights.

### I. Additional Property

In the event that there are portions of the Master Plan that have not been added to the Neighborhood, the Founder shall have the right, but not the obligation, for a period of thirty (30) years from this date, from time to time in its sole discretion, to add to the Neighborhood any part of the Master Plan Area. The Founder's development rights shall terminate upon the transfer of substantially all of the property owned by Founder to any successor, assign, or other transferee, that would be assuming Founder's role as developer and seeking development rights, whether such transfer is voluntary or involuntary. This reserved development right may be exercised solely by Founder. In the event the Founder transfers property to a transferee and such transferee wants to exercise reserved development rights belonging to the Founder, the transferee must first obtain the approval of 2/3 of the Association and may not act without such approval. No assurances are made as to the boundaries of any portions of the Master Plan Area or the order in which the portions will be added. The exercise of any development right with respect to any portion of the Master Plan Area does not necessarily mean that the right will be exercised with respect to the remainder of the Master Plan Area.

The Founder may also add to the Neighborhood property, any portion of which is within one-half mile of any portion of the Neighborhood (including any property separated from the Neighborhood by a public street, body of water or other property) or any other property with a reasonable relationship to the Neighborhood.

In addition, additional property of any type may be added to the Neighborhood by a majority vote of the Board.

A Supplemental Declaration adding the additional property shall become effective upon being recorded in the county's public records. The Supplemental Declaration may modify or add to the provisions of this Declaration if needed to reflect the different character of the additional property, including a different assessment allocation. A Supplemental Declaration may define Zones, may designate certain Commons as "Zone Commons" for the use of certain Zones and may create an assessment procedure by which certain Zones are assessed separately for Zone Commons. However, no such Supplemental Declaration shall deny use of existing Commons to those Owners who had such right prior to the recording of the Supplemental Declaration. A Supplemental Declaration may also create Zone advisory councils or create a plan for election of the Board of Directors that includes district representation.

The Founder reserves the right to withdraw property from the Neighborhood so long as all Owners within the area to be withdrawn consent and access to the remaining portions of the Neighborhood is preserved.

The Founder hereby reserves for the Association, and grants to the Association, the easement rights intended for the Association as described in the Village Book.

## II. Founder's Additional Reserved Rights

The easements provided by this section are intended to permit the Founder to continue and complete development of the Master Plan Area, whether or not that property is ultimately submitted to this Declaration. Accordingly, the Founder hereby reserves for itself, its successors and assigns, the following rights and easements, which shall benefit all properties within the Master Plan Area and all other properties owned by Founder its successor or assigns that are adjacent to, or reasonably near, the Village (including property separated from the Village by a public road, body of water or other property), whether or not such properties are developed as part of the Village:

**Private Roads and Paths:** A nonexclusive easement for use of any roads or streets which are not accepted for dedication to the public and which are intended for automobile traffic (including rear lanes or other similar access roads which are intended for use only by residents whose Parcels are located on that road), along with a nonexclusive easement for appropriate use of any pedestrian or bicycle paths. If such roads become a primary means of access to a community which is not made part of the Village and the Village does not similarly use the roads of such

community, such community shall contribute its pro rata share of the cost of road maintenance of such commonly used roads.

**Utility Easements:** A blanket easement upon, across, over, through and under the Village for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems and services include, but are not limited to, water, sewer, irrigation, drainage, telephone, electricity, natural gas, television, security, collection of garbage and recyclable materials, cable or communication lines and other equipment. By virtue of this easement the Founder, its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Parcel.

**Cable and fiber optic systems:** Exclusive easements within all of the Village for installation, replacement, repair and maintenance of cable and fiber optic systems. By virtue of this easement the Founder, its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Parcel.

**Police Powers:** A blanket easement throughout the Village for private patrol services and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.

**Drainage, Erosion Controls:** A blanket easement and right on, over, under and through the ground within the Village to maintain and to correct drainage of surface water and implement other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, to grade soil and to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The entity which exercises this easement shall be responsible for notifying the affected Owners (except in an emergency) but shall not be obligated to restore landscaping or other improvements. This easement may be exercised at the option of the Founder and shall not be construed to obligate Founder to take any affirmative action to correct conditions.

**Encroachment:** An easement for any improvements constructed on the Commons which encroach on any Parcel, whether due to any minor deviation from the subdivision plat of the Village or the settling or shifting of any land or improvements.

**Maintenance of Commons:** An easement for maintenance and improvement of the Commons at the Founder's discretion and, to the extent reasonably necessary, an easement over any Parcel for maintenance of the Commons.

**Models; Sales and Management Offices:** The right to maintain a sales office, a management office and an unlimited number of models within the Village. These facilities may be located on

any Parcel in the Village and may be relocated from time to time at the Founder's discretion. The sales office, management office and models may be owned by different entities, including builders and other entities which are unrelated to the Founder. At the end of its use as a sales or management office or model, the Parcel shall be owned by the owner of record, subject to all normal covenants and restrictions for the Village. Subject to state law and local ordinances, the Founder or its assigns may maintain signs on the Commons and on the sales office, management office and models advertising the Village.

**Continued Construction:** To the extent reasonably necessary, an easement over, under and through any roads, whether public or private, and any other Commons for construction equipment, construction materials, and any other purpose related to continued development of any property within the Master Plan Area.

### III. Commercial Use of Images

The Founder reserves the following rights:

**Commons:** The exclusive right to grant permission for the Commons to be photographed, sketched, painted or its image otherwise reproduced for commercial use (including without limitation its use as a motion picture set or as a background for the display of fashions or other goods); and

**Exteriors:** The right to grant permission for similar reproduction of the exteriors of any other part of the Village which can be viewed from streets, alleys or Commons. Such exteriors may be reproduced without the consent of, or payment to, the Parcel Owner, but the above right is not intended to prevent any Parcel Owner from granting independent permission for any part of the Village owned exclusively by that Owner, in which case the consent of the Founder shall not be required.

The Founder may collect a fee for its consent to the use of such images or for the providing of support services to photographers or others. The exercise of this right to collect a fee shall not interfere with normal and customary rights of architects as to structures designed by them. Consent of the Founder shall not be required for photography or other reproductions of the images of the Village in connection with any news or feature coverage, for academic purposes, or by any governmental agency or entity appointed by a governmental agency for the purpose of promoting the Town of Burns Harbor, the development of tourism or commerce or any other similar purpose.

### IV. Name

The Founder, but not any successor, assign, or other transferee shall have the right to change the name, the Village, for all or any part of the property subject to this Declaration. The

Founder may, but is not required to, unilaterally amend this Declaration to reflect the name change.

The Founder reserves the right to trademark the name "the Village" or other name of the community as a trade name owned by the Founder. An Owner may use the trademarked name to describe the location of its business and may advertise a business as being located "in the Village" or other trademarked name. If requested by the Founder, the Owner shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name. The Owner may not use the trademarked name in any other manner without the express permission of the Founder, which may be arbitrarily denied.

## V. Association

Except to the extent expressly provided in this Declaration and any supplemental declaration, all of the rights, powers and duties of the Association and the Members, including the Member's voting rights, shall be governed by the Articles and the Bylaws. The Articles provide, among other things, that the Founder shall, for a period of time, appoint certain of the members of the Board of Directors of the Association. The Association shall also have the right to assess charges against Members for any violation of the Declaration, the Village Book, or the Rules and Regulations of the Association.

## VI. Amendment

This Declaration may be amended at any time by an instrument signed by the President or Vice President and Secretary of the Association, certifying approval in writing by Parcel Owners representing two-thirds (2/3) of the votes in the Association as provided for in the Village Book. Rights reserved to the Founder may not be amended without the specific consent of the Founder.

To the extent permitted by law, the Founder specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify the Declaration's provisions or correct errors as inconsistencies, or (iv) to conform to applicable law.

Any amendment shall take effect upon recording in the public records.

Unless this Declaration is terminated, the Association shall re-record this Declaration or other notice of its terms at intervals necessary under Indiana law to preserve its effect.

Where different amendment procedures are provided in the Village Book, Articles of Incorporation and Bylaws, those instruments are amended as provided by their respective provisions.

## VII. Enforcement

The Village Book and all other attachments or exhibits are fully incorporated by reference and shall be enforced as a part of this Declaration. The invalidity of any part of this Declaration (including any attachment or exhibit) shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Association, the Founder or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity. The Board shall be empowered to bring suits on behalf of the Association.

Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Association in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Parcel Assessment to the Owner against whom such action was taken.

This Declaration shall be construed in accordance with the laws of the State of Indiana.

## VIII. Miscellaneous

Any and all rights, powers, easements and reservations of the Founder set out in this Declaration, the Village Book, or the Articles or Bylaws of the Association, may be assigned in whole or in part, at any time or from time to time, to the Association. Each such assignment must be recorded by an instrument recorded in the Porter County Recorder's Office.

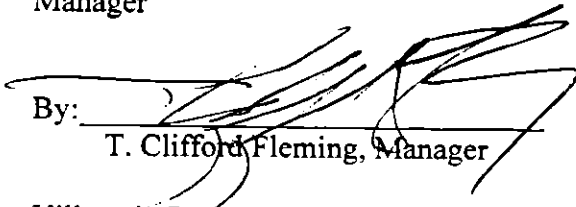
The provisions of this Declaration are binding on, and shall inure to the benefit of, the Founder, the Association, and Owners and their respective heirs, legal representatives, successors and assigns.



IN WITNESS WHEREOF, the undersigned does hereby make this First Amended, Supplemented, and Restated Declaration of Codes, Covenants and Easements for the Village in Burns Harbor and has caused this First Amended, Supplemented, and Restated Declaration to be executed as of the day and year first above written.

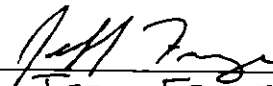
Founder:

BH, LLC,  
an Indiana Limited Liability Company  
By: Tara Management Co., LLC  
an Indiana limited liability company,  
Manager

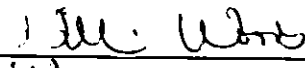
By:   
T. Clifford Fleming, Manager

Association

Village in Burns Harbor Property Owners  
Association, Inc.

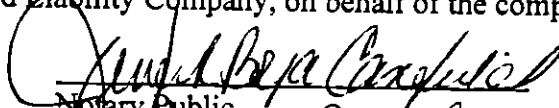
By:   
Print: JEFF FREEZE  
Its: President

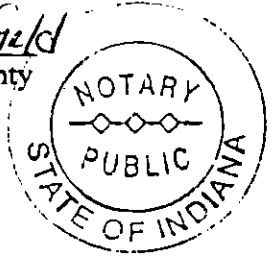
Certifying Approval of 2/3 of Owners:

By:   
Print: WILLIAM WOODS  
Its: Secretary

STATE OF INDIANA     )  
                                  ) SS  
COUNTY OF PORTER    )

The foregoing instrument was acknowledged before me this 29 day of July, 2011 by T. Clifford Fleming, Manager of Tara Management Co., LLC, as Manager of BH, LLC, an Indiana Limited Liability Company, on behalf of the company.

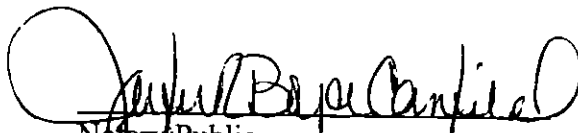
  
Notary Public  
Name Jennifer R Boyce-Cookfield  
Resident of Porter County

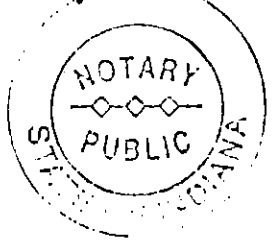


My commission expires:  
3-15-13

STATE OF INDIANA     )  
  ) SS  
COUNTY OF PORTER     )

The foregoing instrument was acknowledged before me this 29 day of July, 2011 by Jeff Fraze as President of Village in Burns Harbor Property Owners Association, Inc., an Indiana not-for-profit corporation on behalf of the corporation.

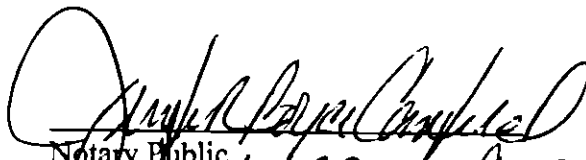
  
Notary Public  
Name Jennifer R Boyce-Cookfield  
Resident of Porter County

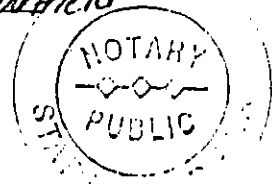


My commission expires:  
3-15-13

STATE OF INDIANA     )  
  ) SS  
COUNTY OF PORTER     )

The foregoing instrument was acknowledged before me this 29 day of July, 2011 by William Woods as Secretary of Village in Burns Harbor Property Owners Association, Inc., an Indiana not-for-profit corporation on behalf of the corporation.

  
Notary Public  
Name Jennifer R Boyce-Cookfield



Resident of Porter County

My commission expires:

3-15-13

## Exhibit A

### THE NEIGHBORHOOD

Phases 1A and 1B:

A parcel of land being part of the West One-Half of the Northeast Quarter and the Southeast Quarter of Section 5, Township 36 North, Range 6 West of the Second Principal Meridian in Porter County, Indiana; said parcel described as follows (bearings based on the North line of the West One-Half of said Northeast Quarter having an assumed direction of South 89° 57' 53" East as shown in a Plat of Survey by Bonar Group, dated 02/28/1996 and recorded on 09/24/2003 as Document 2003-042445 in the Office of the Recorder of Porter County, Indiana): Commencing at a railroad spike at the Northeast corner of the West One-Half of said Northeast Quarter; thence South 00° 53' 41" East along the East line of said West One-Half 1435.68 feet to the Point of Beginning; thence continuing South 00° 53' 41" East 642.81 feet to a 1" diameter iron pipe at the Southeast corner of said West One-Half; thence North 89° 27' 22" West along the South line of the West One-Half 282.03 feet to a 1" diameter iron pipe; thence South 00° 19' 22" East parallel with the West line of said Southeast Quarter 261.13 to a point on the centerline of US Highway 20, said point being on a curve concave Northerly and having a radius of 2864.95 feet; thence Southwesterly along said curve an arc length of 157.87 feet (chord bearing South 77° 28' 33" West, chord length 157.85 feet, delta angle 03° 09' 26") to a point on said curve; thence North 00° 19' 22" West, parallel with said West line 296.83 feet to a 1 1/4" diameter iron pipe, said point being on the South line of said West One-Half; thence North 89° 27' 22" West along said South line 42.89 feet; thence North 23° 16' 27" West 164.73 feet; thence South 64° 16' 09" West 16.01 feet; thence North 23° 16' 27" West 213.95 feet; thence North 77° 36' 06" East 16.29 feet; thence North 64° 16' 09" East 110.10 feet; thence North 49° 29' 20" East 62.82 feet; thence North 62° 38' 48" East 110.28 feet; thence North 66° 43' 33" East 16.00 feet; thence South 23° 16' 27" East 46.62 feet to the beginning of a curve concave Northeasterly having a radius of 5.00 feet, thence Southeasterly, Easterly, and Northeasterly along said curve an arc length of 8.21 feet (chord bearing South 70° 18' 50" East, chord length 7.32 feet, delta angle 94° 04' 45"); thence North 62° 38' 48" East 164.87 feet to the beginning of a curve concave Northwesterly having a radius of 5.00 feet;

thence Northeasterly and Northerly along said curve an arc length of 5.55 feet (chord bearing North 30° 52' 34" East, chord length 5.27 feet, delta angel 63° 32' 29"); thence North 00° 53' 41" West 88.86 feet to the beginning of a curve concave Southwesterly having a radius of 5.00 feet; thence Northwesterly, Westerly and Southwesterly along said curve an arc length of 7.85 feet (chord bearing North 45° 53' 41" West, chord length 7.07 feet, delta angle of 90° 00' 00"); thence North 72° 26' 57" East 57.41 feet; thence North 89° 06' 19" East 135.00 feet to the point of the beginning, containing 6.25 acres more or less and subject to all legal rights-of-way and easements.

Also:

Phase 2 recorded on September 15, 2006 as Document No. 2006-028019; and Phase 3 recorded on May 14, 2008 as Document No. 2008-013307

## Exhibit B

### Additional Real Property Subject to the Declaration

Phases 4A, 4B, 4C, 5, 6, 7 & 8:

Part of the West  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of Section 5, Township 36 North, Range 6 West of the 2nd P.M. in Porter County, Indiana, described as follows: Beginning at the Northeast corner of the West  $\frac{1}{2}$  of said NE  $\frac{1}{4}$ ; thence South 00 53'41" East, along the East line of the West  $\frac{1}{2}$  of said NE  $\frac{1}{4}$ , 752.68 feet to the Northeast corner of The Villages in Burns Harbor Phase 2, the Dunbar Addition to Burns Harbor, as recorded in Plat File 45-E-6B, in the Office of the Recorder of said County, said Northeast corner being the point of beginning; thence Westerly and Southerly along the Northerly and Westerly lines of said Phase 2 to the Northeast corner of The Villages in Burns Harbor Phase 3, as recorded in Plat File 45-E-6C, in the Office of the Recorder of said County; thence Westerly and Southerly along the Northerly line of said Phase 3 to the West line of said NE  $\frac{1}{4}$ ; thence North 00 50'58" West, along said West line, 1302.14 feet to the Southerly right-of-way line of Interstate Highway No. 94; thence the following three courses along said Southerly right-of-way line; North 64 28'15" East, 257.11 feet; thence North 68 25'44" East, 585.96 feet; thence North 77 16'27" East, 455.11 feet to the North line of said NE  $\frac{1}{4}$ ; thence South 89 57'53" East, along said North line, 97.56 feet to the point of beginning, containing 30.237 acres, more or less.

## Exhibit C

### MASTER PLAN AREA

PARCEL 1: All the part of the West ½ of the Northeast ¼ of Section 5, Township 36 North, Range 6 West of the Second Principal Meridian, in Porter County, Indiana lying South of the Southerly right-of-way line of I-94.

PARCEL 2: The East 1 acre of the West 8 acres of that part of the North Half of the Southeast Quarter of Section 5, Township 36 North, Range 6 West of the Second Principal Meridian, in Porter County, Indiana, lying North of the center line of U.S. Highway No. 20.

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Exhibit D

**THE VILLAGE  
IN  
BURNS HARBOR**

BOOK OF OPERATING PRINCIPLES

EFFECTIVE JULY 29, 2011

*Village Book of Operating Principles for the Village*

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## How this Village Book Works

The Village in Burns Harbor Book of Operating Principles (the "Village Book") is a guide for the residents of the Village in Burns Harbor (the "Village"). It is an exhibit to and a part of the Declaration of Codes, Covenants, and Easements for the Village. Both the Declaration and the Village Book are recorded in the public records of Porter County, Indiana. This Village Book is a user's manual to help explain the principles for managing the neighborhood.

This Village Book begins with an overview of the community and ends with a look at the future. In-between are four chapters concerning Physical Surroundings, Architectural Continuity, Community Life and Finance. Each of these four middle chapters has two parts. The first part considers the issue from a community-wide viewpoint, while the second part brings the issue to the level of the resident.

The Appendix concerns development issues and is an integral part of the Village Book during the community's early years. The Appendix may be quite safely excised from the Village Book after the Founder no longer has any control over the development.

Most chapters contain three types of information: "Guiding Principles," "Quick View," and "Dialogue."

**Guiding Principles**, the text that begins each chapter, provide the philosophical framework the community needs to make decisions. Not every issue or concern can be anticipated, and the Guiding Principles don't try to cover every possible situation. Instead, Guiding Principles help the community through the decision-making process.

**Quick View** outlines some of the **basic** issues discussed in the chapter in the format of a table or grid. Although it sometimes summarizes information presented in the Guiding Principles, Quick View may also present new information. Quick View helps to define roles and to draw distinctions between related ideas.

**Dialogue** begins the process of interpretation in the form of questions and answers. Dialogue is never intended to contradict Guiding Principles or Quick View, but it may fill in the gaps. Usually, Dialogue will be in the form of a new policy adopted by the Board. Occasionally legal advice will be required to help interpret the documents. The Board should compile the questions and answers it has approved and record this running Dialogue at least annually. Once adopted, succeeding Boards should give Dialogue due consideration as precedent. However, the Board is free to reconsider Dialogue and adopt new answers if warranted. When that happens, the Board is encouraged to include in the new Dialogue the reason for the revision.

We hope that an association that follows the Village Book will avoid many of the kinds of disputes that can divide a community. However, in the event of legal action, the Guiding Principles and Quick View portions of this Village Book, including information set out in table form, are to be interpreted as a legally binding portion of the Declaration. As Quick View often abbreviates information from the Guiding Principles, any conflict should be resolved in favor of the Guiding Principles. Dialogue is not binding but should be given appropriate consideration in court.

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## Table of Contents

Chapter	Page
<b>1. Overview of the Community</b> .....	1
<i>Vision for the Village in Burns Harbor; The Association; Board of Directors; President; Chancellors</i>	
<i>Quick View: The Association</i>	
<b>2. Physical Surroundings</b>	
Part I: The Commons .....	3
<i>Use of the Commons; Maintenance and Capital Improvements; Roads, Utilities and Drainage; Purchase or Conveyance of Commons; Dedication and Condemnation; Insurance and Reconstruction.</i>	
Part II: Private Domains.....	8
<i>Relationship between Parcels; Contract for Maintenance; Insurance</i>	
<i>Quick View: Acquisition and Conveyance of Commons</i>	
<b>3. Architectural Standards</b>	
Part I: The Village in Burns Harbor Design Code.....	11
<i>The Village in Burns Harbor Design Code; The Village Architect; The Village in Burns Harbor Architectural Review Committee; Revision of the Village in Burns Harbor Design Code.</i>	
Part II: Parcel Modifications.....	14
<i>Construction Subject to Review; Standard for Review; Review Procedure; Builders; Enforcement; Liability</i>	
<i>Quick View: The Village Architect and the Village Architectural Review Committee</i>	
<b>4. Community Life</b>	
Part I: The Association.....	20
<i>Association Operation; Election Procedure; Board Meetings; Neighborhood Meeting and Voting; Use of Professional Management.</i>	
Part II: Neighbors.....	24
<i>Use of the Parcel; Safety and Appearance; Pets; Rules and Regulations; Role of the Chancellor; Enforcement.</i>	

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Quick View: *The Chancellor, the Board and the President*

**5. Finance**

Part I: The Association Budget .....30  
*Accounting; Budget; Reserves and Deferred Maintenance; Unanticipated or  
Extraordinary Expenses; Zone Expenses.*

Part II: Assessments on Parcels .....34  
*Allocation of Assessments; Transfer Fees; Collection of Assessments; Notice to  
Purchasers.*

Quick View: *Assessments*

**6. The Future** .....39

*Additional Association Powers; Amendment; Alleys and Footpaths; Duration;  
Termination.*

**7. Definitions** .....41

**Appendix: The Beginning Years** .....44

*Board of Directors, Commons, Architectural Control, Finance.*

Quick View: *Roles of the Founder and the Association*

# 1 Overview

● The Village is based on the best features of a traditional town: a choice of housing options for different ages and incomes, pedestrian-friendly streets, attractive public spaces and a mix of land uses. The Village evolved from memories of a way of life that has been somehow lost in the current thinking that drives modern development.

The Village is not a subdivision or a development, but a place where neighbors talk over the backyard hedge, where kids ride their bikes to the park, where people in the home next door or across the street are friends, not strangers. So often, today's modern developments actually separate people by class or income. The Village, as in the neighborhoods of forty or fifty years ago, an office worker will live next to a steel worker, newlyweds next to empty-nesters, school teachers next to businesspersons

While the Village is town-like in its design, it does not have a town government. It is part of the larger Town of Burns Harbor, and, within the neighborhood, relies on the covenants set out in this Village Book. The covenants are agreements between neighbors. Some of those agreements provide a way to maintain the Commons—the greens, squares and other open space and recreational facilities that are shared by all of the Village's residents. Other covenants provide agreements between neighbors to provide ways of getting along. By taking title to property within the Village, owners agree to these covenants.

The needs of the Village are met primarily by two separate entities: the Association.

- The **Association** takes care of the physical needs of the Village by maintaining the Commons and providing services. The Association also helps preserve neighborhood harmony by mediating understanding, stimulating neighborhood discussions, and enforcing the covenants when necessary.

The Association will work to protect the architectural integrity of the community over the long term, to work on long-range planning and to represent the voice of the Village in outside matters that may impact the neighborhood.

All property owners, whether owners of commercial or residential property, are Members of the Association in the Village.

The Association has three elected categories: the President, the Board of Directors, and one or more Chancellors (who may sometimes be appointed rather than elected). Each has different responsibilities and a certain degree of autonomy.

- The **Board of Directors** sets policy for the maintenance of the Village's physical assets and enforces the covenants of this Village Book when necessary.

- The **President** is the chief executive of the community and is empowered to make decisions within the scope of authority described by the Board and this Village Book.
- The **Chancellors** mediate disputes within the community, giving neighbors a forum to work out differences and find solutions. Depending on the circumstance, they may act individually or as a committee. If disputes cannot be resolved by mediation, the Chancellors make recommendations to the Board of Directors.

Detailed information about the operation of the Association is contained in Chapter 4 of this Village Book.

## Quick View: The Association

The Association	
<b>Purposes</b>	Maintain the Commons, support the covenants, and help prevent or resolve conflicts between neighbors.
<b>Shared Purposes</b>	Enhance the quality of life for all residents. Protect the architectural and landscape integrity of the community. Envision and plan for the future. Serve as the voice of the community.
<b>Legal Status</b>	Nonprofit corporation intended to have tax status as a homeowners association under Section 528 of the Internal Revenue Code.
<b>Members</b>	All individuals or entities owning property in the Village.
<b>Primary Source of Funds</b>	Assessments on Owners.

# 2.1 Physical Surroundings, Part I: The Commons

The Association will own most of the open space and other commonly used portions of the community, called the Commons. In most cases, the Association will hold title to the Commons in fee simple. In other cases, the Association's ownership may be in the form of easements, leases or other rights.

## Use of the Commons

Every Owner has, and is hereby granted, an easement for appropriate use and enjoyment of the Commons. This easement passes with title to the Owner's Parcel and is automatically extended to the family members, tenants or guests who reside on the Parcel or are accompanied by the Owner. The easement is subject to the Association's right of regulation in accordance with this Village Book and is also subject to any limitations that may be contained in the conveyance of that portion of the Commons to the Association.

**Open-Air Markets and Festivals.** the Village is intended to be a vibrant community with activity that brings people together. The Board may permit use of portions of the Commons for various events. The following are examples:

- Farmers' Market or other open-air market.
- Festivals, parades, block parties or other events intended to enrich and enliven the community.
- Private parties and events.

As part of these events, the Board may rent or assign space for pushcarts, kiosks, stands or temporary sales structures and may permit the erection of tents and banners. Such uses may be only for special events or on a recurring basis. However, other than where specified in this Village Book, no contract shall be for a period of longer than a year, including all renewal options. Any revenue from events is to benefit the Association.

**Club Membership.** The Association may permit limited use and access to non-residents of all or a portion of the Commons through the sale of club memberships or other fees. Any such revenue is to benefit the Association.

**Damage or Destruction of Commons.** If any the Village Commons or improvement on the Village Commons is damaged or destroyed by an Owner or a tenant of a Parcel within the Village, or by family members, guests, or agents of the Owner or occupant, the Owner must, within fifteen (15) days after it occurs, repair the damage in a good and workmanlike manner and restore any damaged the Village Commons Improvement or facility to its existing state before the damage or destruction occurred. If the Owner does not repair the damage as described

above, then the Founder or the Association may repair the damage at the Owner's expense. The Owner will also be charged a management fee if he or she does not repair the damage. If the damage is unsightly or dangerous, the Founder or the Association has the right to repair of the damage immediately and charge the Owner responsible for the damage for the cost of the damage plus a management fee after the repair has been completed. If not covered by insurance, then the cost of the repairs becomes a Special Assessment on the lot of the Owner and constitutes a lien on the Owner's lot. This lien is collectible in the same manner as other Assessments set out in the Declaration and the Village Book. The Founder or the Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity to enforce the provisions of this Section.

**Limitation of Liability.** The Association shall use reasonable judgment in maintaining the Commons, enforcing traffic control measures and providing security, if any, but the Association is not an insurer of safety, makes no warranty and assumes no liability for any loss or injury.

### Maintenance and Capital Improvements

The Association is responsible for the management, control and improvement of the Commons. At a minimum, it must keep the Commons clean and in good repair. The Association may also make capital improvements to the Commons and may modify the uses of the Commons. Any changes to the Commons must be approved in accordance with the architectural review standards of Chapter Three.

To the extent reasonably necessary, the Association has, and is hereby granted, an easement over each Parcel for maintenance of the Commons. The Association also has, and is hereby granted, an easement with respect to any improvements constructed on the Commons that encroach on a Parcel, whether due to any minor deviation from the subdivision plat of the Village or the settling or shifting of any land or improvements.

### Roads, Utilities, Drainage

The Association manages the various systems within the community that are part of the Commons. The Association has the benefit of certain easements, and also has the power to grant easements to others, such as granting to a utility company rights for utility installation and maintenance. The following are some of the Association's rights and responsibilities:

**Common Road Regulation.** To the extent permitted by law, the Association may make rules and regulations concerning driving and parking within the Village and may construct traffic calming devices as approved by the Village Architect, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving on the Common Roads. To the extent permitted by local government, the Association may enforce any violation in accordance with Chapter Four and may tow offenders.

**Surface Water or Stormwater Management System.** The Association has the power to maintain proper drainage within the Village. In the exercise of this power, the Association shall have a blanket easement and right on, over, under and through the ground within the Village to

inspect, maintain and correct drainage of surface water and other erosion controls. This easement includes the right to cut or remove any vegetation, grade soil or take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Association shall notify affected Owners (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

**Utility Easements.** The Association has a blanket easement upon, across, over, through and under the Village for access, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation, drainage, telephone, electricity, television, security, cable or communication lines and other equipment. By virtue of this easement the Association may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Parcel. If authorized by majority vote of the Board, the Association may assign all or a portion of its rights under this paragraph to one or more utility providers.

**Police Powers.** The Association has a blanket easement throughout the Village for private patrol services and for police powers and services supplied by local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.

To the extent the Founder has the easements, the Founder shall have and convey to the Association all easements necessary to accomplish the above.

### Purchase or Conveyance of Commons

The Association may acquire additional Commons. The decision to acquire additional Commons (other than that added by the Founder), whether by purchase or lease or other means, shall be authorized by a two-thirds vote of the Board of Directors. If the purchase or lease is costly enough to be considered a substantial capital expense, it must be approved as described in Chapter Five.

The Association, by approval of two-thirds vote of the Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Commons.

As described elsewhere in this chapter, the Board may rent or assign space in the Commons on a short-term basis for open-air markets, festivals, parties and other events and may dedicate part or all of the Commons to the public. Although it would be unusual, the Association may sell, donate or grant long-term leases for small portions of the Commons or exchange parts of the Commons for other property inside or outside the Village when the Board finds that it benefits the community in at least one of the following two ways:

- The conveyance is intended to benefit the community in ways other than the revenue, if any, to be derived from the transaction. For instance, the Association may convey or exchange property if necessary to improve access to the Village or to improve utility service.



- The revenue to be derived is significant and the use and appearance of the Commons is not significantly impaired. For instance, the Association might sell or lease small amounts of space for cellular telephone transmission equipment, subject to design approval in the architectural review process.

Any decision to donate, sell, exchange or lease any portion of the Commons must be approved by two-thirds of the Board. A transaction for sale, exchange or lease for a term of more than one year, including all tenant renewal options, cannot be completed until thirty days after notice to Owners. If requested by at least 10% of the Owners within the 30-day period, a Neighborhood Meeting must be held following at least 10-days notice and, if a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by majority vote of the Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Commons should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and giving 30-days notice.

A transaction for sale, exchange or lease of substantially all the Commons must be approved according to the procedures outlined in chapter 23-17-20 of the Indiana Code.

Except as specifically permitted by this Village Book, the Commons cannot be rented or sold.

### Dedication and Condemnation

Dedication is the voluntary conveyance of title to a municipality or other governmental entity, while condemnation is the taking of property by a government or other authority having the power of eminent domain. Any dedication or conveyance is subject to acceptance by the applicable governmental agency.

**Dedication:** If any portion of the Common Roads has not previously been dedicated to the public, the Board may, by majority vote, cause the Association to convey title to or dedicate the Common Roads to the appropriate public authority. Any other dedication of the Commons must be approved in the same manner as a conveyance of the Commons.

**Condemnation:** If all or any part of the Commons is taken by, or an offer is accepted in lieu of condemnation from, any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board shall have the right to act on behalf of the Association with respect to any negotiation or litigation relating to the offer or taking.

### Insurance and Reconstruction

Insurance can protect the Association's assets and financial security. However, insurance is a large, and sometimes volatile, item on the Association's budget. At least once each year, the Board should review types of insurance and terms and limits of coverage for insurance held by the Association. Changes in replacement costs or anticipated liabilities can make old insurance inadequate. In rare cases, if coverage becomes too expensive, the Association may make a decision to drop certain coverage or to take a higher deductible. In any event, the Board is

expected to exercise the "prudent person" principle in determining how to deal with insurable risks of the Association.

Whenever practical, insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement which prevents the insurer from denying the claim of an insured because of negligent act of other insureds.

**Types of Insurance.** The following are examples of insurance the Association should consider:

- **Casualty Insurance.** The Board should consider whether the Commons include structures or other improvements that can and should be insured against casualty loss. Certain improvements, such as green space or landscaping, may not be insurable. However, buildings or other structures usually are insurable. Endorsements for fire and extended coverage, vandalism, malicious mischief, flood (if in a flood-prone area) and windstorm should be obtained where available at reasonable cost. Coverage should be in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy or "agreed amount" insurance should be obtained.
- **Public Liability.** The Board may obtain public liability insurance in such limits as the Board determines, insuring against liability arising out of, or incident to, the ownership and use of the Commons and any topographic conditions or water access located on or adjoining the Village. At the Board's discretion, such coverage may include easements, such as walkways.
- **Director Liability Insurance.** The Board may obtain liability insurance insuring against loss for actions taken by members of the Board, officers of the Association and advisory members in the performance of their duties. The Board may also obtain fidelity insurance or bonding for Board members, officers and employees.
- **Other Coverage.** The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law and such other insurance as the Board may determine or as may be requested from time to time by a majority vote of the Members.

**Repair and Reconstruction after Fire or Other Casualty.** If improvements to the Commons are damaged, the Board shall arrange for and supervise prompt repair and restoration of the improvements. The Board obtains funds for repair or reconstruction first from the insurance proceeds, second from reserves for the repair and replacement of such improvements and third from any Special Assessments that may be necessary.

# 2.2 Physical Surroundings, Part II: Private Domains

The design for the Village is intended to maximize land usage and sense of community by providing gracious squares and parks while offering small but private yards for individual use. This chapter enables some of the special design considerations of traditional neighborhood development through easements and other provisions concerning the buildings and lots. A related chapter, part II of Chapter Four, provides covenants for daily living.

## Relationship Between Parcels

As provided by the Village Design Code, certain buildings within the Village may be attached townhouses or the dwellings may be detached but placed on or near the property line. The easements in this section are intended to provide guidelines for reasonable cooperation between neighboring Owners. The Association may make rules for maintenance and use of easement areas and shared improvements that are to be uniformly applied to all similarly configured Parcels.

**Parcel Lines.** The re-subdivision of any Parcel or the separate conveyance of any part of a Parcel other than an easement is prohibited. The specific consent of VARC is required to otherwise modify the boundary lines of any Parcel.

**Structural Party Walls.** Each Owner grants to the Owner of each adjacent Parcel the right and easement to maintain and to utilize any exterior or interior wall that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the buildings, or parts of a building, on more than one Parcel. Maintenance of each surface of the party wall shall be the sole responsibility of the Owner whose building faces such surface. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's building or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

**Exterior Walls.** An exterior wall which supports the building on only one Parcel, or which encloses a courtyard on one Parcel, shall not be considered a party wall. The Association may make rules and regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining owners for painting and repair and granting access over the adjoining Parcel as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with Association Rules and Regulations.

**Yard Easements.** To allow the most efficient use of a Parcel while complying with governmental setback requirements, a portion of a Parcel along a lot line may be subject to an easement for use by the adjoining Parcel Owner. The Owner of a Parcel subject to such an easement will usually be the beneficiary of a similar easement burdening another Owner's Parcel,

unless the Parcel is a corner lot or is larger than the adjoining Parcels. Such easements may be designated on the plat, in the Village Design Code or in the deed from the Founder to the first Owner of the burdened Parcel. Such use easements may be up to four feet wide and shall run along a boundary line. Subject to regulation under the Village Design Code, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and, subject to Chapter Three, may place air-conditioning equipment, fences, decks or patios and other fixtures (but not a primary structure) upon the easement area.

**Roof Overhang; Footings.** For certain building types, such as sideyard houses, which are to be built along a property line, the Village Design Code may permit roofs, gutters, soffits, downspouts and other features to overhang this property line and may allow footings and rain leaders to intrude into the adjacent property. To the extent allowed by the Village Design Code and local governmental regulations, the adjacent property shall be subject to an easement for such intrusion. However, roofs, gutters, downspouts and rain leaders may not discharge water onto the surface of the adjacent property as a point source.

**Townhouse or Row House Roof.** If a townhouse or row house wall or parapet exists along or very near a property line, the owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building in accordance with industry standards and in order to make the new building watertight. This right includes the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and watertightness of the existing building is not impaired. The cost of this flashing shall be borne by the owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property owners.

### Contract for Maintenance

In a "traditional neighborhood" development, front yards are relatively small and form an important part of the streetscape. As further described in Chapter Five, certain areas may form a Zone in which the Owner's contract for landscape maintenance in order to provide a uniform level of care. The Association may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Association, the cost of which will be assessed to that Owner as an Individual Parcel Assessment. The terms and conditions of all such contracts are at the discretion of the Board.

### Insurance

The loss of a building due to fire or other casualty affects the entire block. Insurance is necessary to make sure that each Owner has the funds available to rebuild after a casualty.

**Parcel Coverage.** Each Owner shall obtain casualty insurance for improvements on the Parcel. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the value (based upon replacement cost) of the insurable improvements constructed on the Parcel. If requested by the Association, an Owner shall provide evidence of such insurance to the Association.

**Casualty.** If fire or other casualty damages or destroys a building or any other improvements on a Parcel, the Owner of that Parcel shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the VARC. Construction and restoration must be diligently pursued and completed within a reasonable period of time. If the Owner fails to clear and secure a Parcel within 30 days after a casualty, the Association may, in accordance with the provisions of Chapter Four, remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Parcel Owner as an Individual Parcel Assessment.

## Quick View: Acquisition and Conveyance of Commons

	<i>Purpose:</i>	<i>Approval Process:</i>
<b>Acquisition of Additional Commons</b>	Benefit to Neighborhood	Authorized by a two-thirds vote of the Board. If purchase or lease is costly enough to be considered a significant capital expense, it must be approved as described in Chapter Five
<b>Grant of Easements</b>	Provision or improvement of utility services	Board may approve easements to utility providers by majority vote
<b>Short-Term Rental or Assignment of Portions of Commons</b>	Events such as farmers' market, festivals, block parties or private parties.	Board approval; term of no more than one year
<b>Sale, Donation or Long-term Lease of Portions of Commons</b>	Beneficial use for community or significant income without significant impairment of Commons	Two-thirds vote of Board subject to Owners' right of rescission.
<b>Dedication or Condemnation of Portions of Commons</b>	Conveyance to a municipality or other governmental entity	Board may approve dedication of streets by majority vote and may negotiate regarding condemnation. Other dedication subject to the same approval requirement as for a sale of Commons.

## Dialogue

**Q. Can a Member get permission to have a private party on the Commons?**

The Board will set policy from time to time concerning use of the Commons for private parties. If such use is permitted, the Board may limit the number of times a Member may have a party on the Commons and may establish fees and other requirements for use.

# 3.1 Architectural Standards, Part I: the Village Design Code, Village Architect and Village Architectural Review Committee

Improvements within the Village will be designed and built by different homeowners, architects and builders. Each of these individuals will contribute to the shaping of the community.

The Village Design Code communicates the basic elements that are essential for creation of this community. It is intended to conform to “traditional neighborhood” or urban design principles and contains features of both a conventional architectural code and a zoning code.

The architectural review process concerns all portions of the Village Design Code.

Copies of the Village Design Code are available from the Association. Because the Village Design Code may change from time to time, it is important that an Owner obtain or confirm that they have the current version of the Code before undertaking any change or improvement of their property.

## Village Architect

The Village is to have a Village Architect, whose job it is to understand, interpret and, when necessary, modify the Code. The Village Architect must have a professional degree in architecture or urban design from an accredited university or comparable qualifications and must have experience or training in traditional neighborhood or urban design, or other qualifications deemed appropriate by the Founder. The Village Architect does not, however, need to be licensed to practice in Indiana.

The Village Architect is originally appointed by Founder and paid by Founder, and serves at its pleasure. Once Transition Point III has been reached, the Board shall appoint the Village Architect and the Association shall then pay the salary of the Village Architect, who may be employed on a part-time or as-needed basis.

## Village Architectural Review Committee

The Village Architectural Review Committee, or VARC, has at least three members and no more than seven members. At all times, the VARC includes the following members, who are entitled to vote on all matters before the VARC:

- The Village Architect appoints one voting member of the VARC.
- The Founder, by its Manager T. Clifford Fleming, appoints one voting member of the VARC who shall serve at the sole discretion of T. Clifford Fleming.
- The Founder appoints T. Clifford Fleming as a voting member of the VARC and T. Clifford Fleming shall serve in this capacity until he is no longer willing or able to fill this position.

In the event that either (1) T. Clifford Fleming is no longer the manager of Founder; or (2) Founder is replaced by a successor or assign for any reason whatsoever, whether voluntarily or involuntarily; then any rights of Founder to appoint members to the VARC shall immediately terminate and all said rights of appointment shall belong wholly and solely to the Association.

The other VARC members, if any, are appointed by the Board. VARC shall determine the number of members of VARC, except that once construction of at least 125 Residential Units has occurred, at least one more voting member of VARC shall be appointed by the Association. Unless authorized by VARC the three (3) voting members will vote on applications for initial construction and other VARC matters; other members shall advise VARC but do not vote. The only exception is that all members vote on proposed modification of completed Parcels.

VARC may employ personnel or contract with individuals or companies as necessary to assist in the review process. Professionals and staff may be paid reasonable compensation for serving on VARC, as determined from time to time by the Board. All members shall be compensated for expenses.

The Board shall set VARC's review fees to cover all or part of the expected cost of its operation and shall fund any deficit. The fee structure is not to be intended to create a surplus other than an operating capital fund for VARC.

### Revision of Design Code

With the consent of the Board and following Transition Point III, the Village Architect may request the VARC to revise any part of the Village Design Code from time to time for any of the following reasons:

- (a) To correct errors or resolve conflicts with governmental requirements or make changes that the Village Architect believes will better accomplish the objectives of the Village;
- (b) To permit use of new materials or techniques for construction or landscape that are appropriate to the Village; or
- (c) To recognize changing land use conditions over time, both from within and outside the Village.

If requested by petitions signed by at least 10% of the Members, a Neighborhood Meeting shall be called and, if a quorum is present, the request for modification to the Village Design Code may be repealed by majority vote of the Members.



# 3.2 Architectural Standards, Part II: Review Process

The review process ensures that as the Village is built, construction follows the vision set out in the Village Design Code. Initial construction is dramatic, as each street takes shape. The facades of the buildings form the community's outdoor rooms, and the community envisioned by the Village Design Code springs to life.

However, the Village is not frozen in time. Communities evolve after the initial construction is complete. Homes are enlarged to suit a growing family. A tree falls and must be replaced. Children clamor for swimming pools and basketball hoops. A puppy requires a fenced yard. The questions surrounding modification review concern not just design but compatibility with the adjacent properties.

This Chapter provides a method for review of both initial construction and modifications.

## Construction Subject to Review

Although this Chapter refers to "Parcels" and applies primarily to private property, it also applies to modification of the Commons. Construction of any structure upon the Commons (other than initial construction by the Founder), or modification of any existing structure, as well as any material alteration of the landscaping or topography of any Commons, must be approved in advance by VARC.

All plans and specifications for construction of the main building, outbuilding, landscaping and all other parts of the Parcel visible from outside the Parcel, such as fences and driveways, must be reviewed and approved before construction in accordance with this Chapter. No construction or clearing of a Parcel may begin until approved by VARC. Once construction begins, all construction must comply with the approved plans and specifications.

After a primary building has been completed and all initial landscaping requirements have been met, modifications to the Parcel are regulated by the modification provisions of this Chapter.

Review for both new construction and modification includes materials and color selection and selection and placement of any ornamentation or functional accessories, including but not limited to the following:

- materials and color selection for the main building and any outbuilding (including roof, doors, windows and trim);
- landscaping, grading and any removal or substantial pruning of trees or plants;

- privacy walls or other fences and gates, driveways, walks, patios and other ground surface materials;
- antennas, satellite dishes or receivers, solar panels or other devices which are visible from outside the Parcel;
- fountains, swimming pools, whirlpools or other pools, awnings, flower boxes, shelves, statues or other outdoor ornamentation and window coverings visible through the window;
- signage of any type; and
- permanent or semi-permanent play equipment, whether or not secured, such as tree houses, pools, basketball hoops, skateboard ramps and swing sets.

The listing of a category does not imply that such construction or use is permitted. Review is not required to repaint with originally approved paint and colors, or to replace the roof or other components with duplicates of those originally approved.

The cutting, removal or intentional damage of existing trees (including excessive pruning or failure to use due care with equipment or when removing other trees permitted to be removed) is strictly regulated under the Village Design Code. All plans must comply with applicable drainage, water conservation, erosion control and stormwater detention requirements.

### Standard for Review

Applications are approved based upon compliance with the Village Design Code in effect at the time of the submittal, compatibility with surrounding Parcels and Commons and overall quality of design.

VARC may also consider other factors, including purely aesthetic considerations, so that it may require changes to a plan to improve its appearance even if the design meets the technical requirements of the Village Design Code. If VARC rejects an application due to overall design quality, despite compliance with the Village Design Code, VARC may make suggestions for improving the design.

VARC may occasionally grant a variance from the Village Design Code based on existing topographical or landscape conditions or architectural merit, but the granting of such a variance shall not be deemed a precedent for other variances.

### Review Procedure

VARC may establish forms and procedures for the review of applications, including review costs and fees to be paid by the applicant. Plans and specifications for review shall be submitted in the form and number required by VARC. VARC may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

VARC shall use best efforts to notify the applicant of its decision within the time allowed by its design approval process handbook. However, a delay in reviewing an application shall not be deemed consent to construction. If approval is given, construction of the improvements may begin. If construction is not begun within six months after approval of the plans and specifications and there has been any change in the Village Design Code in the intervening months which would otherwise apply to the approved construction, then the approval will expire and the plans and specifications must be resubmitted.

VARC or its agent may inspect the property during construction but has no obligation to make any such inspection.

Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes. If VARC notes noncompliance, the Owner will be required to make the necessary changes. However, VARC is not responsible for compliance with governmental requirements.

When the primary building and landscaping are completed in substantial compliance with the approved plans and specifications, VARC shall issue a Certificate of Substantial Conformance that describes any minor areas of deficiency that need to be corrected. The Certificate of Substantial Conformance is intended to allow closings to occur on time while preserving VARC's ability to enforce full compliance with the approved plans and specifications. All fines and other enforcement are to be waived so long as the deficiencies are corrected within 60 days. Upon correction of all deficiencies, VARC shall issue a Certificate of Completion in recordable form.

### *Notice to Owners*

The contract for the construction or modification of a home is negotiated between the Parcel Owner and the contractor. Neither the Founder nor VARC is a party to that contract. Owners are ultimately responsible for assuring that the improvements constructed on the Parcel are in accordance with the approved plans and specifications. For the Owner's benefit, **contracts should require the contractor to build or modify the improvements in accordance with plans and specifications approved by VARC.** Receipt of VARC's Certificate of Completion indicating compliance with the approved plans and specifications should be a condition of final payment on the contract.

### Enforcement

If any construction or installation is begun which has not been approved or which deviates from approved plans and specifications, the Board may by majority vote approve any of the following actions on behalf of the Association:

- Require the Owner to resolve the dispute through binding arbitration,
- Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans.
- Bring suit seeking other remedies, including any combination of damages, specific performance, declaratory decree and/or permanent injunction or other remedy at law or in equity.

If the Association brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Association shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted.

VARC may require the builder or Owner to post a deposit from which VARC may deduct published fines and costs of rectifying the deviation for failure to comply with the approved plans and specifications and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

Improper cutting, removal or intentional damage to existing trees is subject to fines plus a requirement that the tree be replaced with an approved species of comparable caliper, or, if approved by VARC, a combination of trees totaling the caliper of the removed tree. Fines shall be set by VARC.

Failure to enforce any provision of this Chapter shall not be deemed a waiver of the right to do so at any time thereafter.

### Builders

VARC may establish review and approval process for builders and other contractors. Approval shall be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to dispose of construction debris properly and to build in accordance with the approved plans and specifications. Builders may be required to post a deposit for compliance and damages. Failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in the Village.

### Liability

VARC and its inspectors are concerned primarily with aesthetic considerations, and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by VARC of an application shall not constitute a basis for any liability of the Founder, or members of the VARC, Board of Directors or Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any contractor or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the property.

## Quick View: The Village Architect and VARC

	Village Architect	VARC
<b>Role</b>	Helps to interpret the Code. Suggests modifications when appropriate. Sits on VARC.	Reviews applications for new construction and modifications to existing improvements.
<b>How Selected</b>	Selected by the Founder and serves at its pleasure.	The Founder selects voting members. Any additional members are selected by the Board and serve at its pleasure.
<b>Qualifications</b>	Must have a professional degree in architecture or urban design from an accredited university or comparable qualifications, or other qualifications deemed appropriate by the Founder.	No requirements.
<b>Primary Source of Funds</b>	Salary as determined by Board.	Application fees are to cover cost of operation. The Association funds any deficit.

## Dialogue

**Q. Is the Village Architect the architect who designed the community?**

The architect who designs the Master Plan for the community will not necessarily be named the Village Architect. In fact, the Village Architect is often a young but talented architect who is assigned the role. The Village Architect is not responsible for designing individual houses but can facilitate the design of houses consistent with the overall design vision for the Neighborhood.

**Q. Why do the Board-appointed members of VARC vote only on modifications?**

During initial construction, VARC is primarily concerned with enforcing the Founder's vision and creating the community in adherence to the design principles of the Code. Once the Neighborhood is established, residents are the ones most interested in, and affected by, modifications. Adherence to the Code is still a guiding principle, but input from residents and harmony with the surrounding properties becomes important after the development period.

**Q. Isn't injunction a harsh remedy?**

The right to seek an injunction is the most powerful tool available to the Association. Money damages are usually an inadequate remedy for failure to comply with architectural review provisions as it is difficult for the Association to prove the financial damage caused by an Owner's failure to comply with architectural review provisions. However, an injunction gives the

Association the ability to require an Owner to comply with the approved plans and specifications, regardless of a lack of financial damage and regardless of the cost to the Owner of making such a change.

For instance, if an Owner specifies one type of window in the approved plans and specifications, but then substitutes another during the course of construction, it can be quite expensive for the Owner to remove the incorrect windows and replace them with the correct windows. The power to require that change is the greatest tool the Association has to keep the Owner from succumbing to the temptation to substituting unapproved windows. Unless the recorded documents allow this powerful tool, a court might hesitate to grant such a remedy.

# 4.1 Community Life, Part I: The Association

All owners of property in the Village are automatically members of the Association. Owners of property who are not residents are also Members of the Association. Membership in the Association is a legal right attached to the property and is transferred to the new owners upon transfer of title to the land. When Owners vote, their vote is weighted in the same way as relative values are assigned to Parcel types, as discussed in Chapter Five, Part II.

This Chapter contains some of the most important provisions concerning Association operation and voting procedure. Additional provisions are contained in the Association's bylaws.

## Association Operation

The operation of the Association relies on the following individuals:

- **The Board**: Most decisions about the Association are the responsibility of the Board of Directors, acting on the Members' behalf. Unless specifically provided otherwise, the Board has the authority to act on behalf of the Association and to make all decisions necessary for the operation of the Association, the care of the Commons and the enforcement of covenants contained in this Village Book.
- **President**: The President executes the details of projects authorized by the Board and handles matters that arise between Board meetings, within the scope of authority established in the Bylaws or by the Board.
- **Chancellor(s)**: The Chancellor(s) do not take part in operational decisions of the Association. The Board determines the number of Chancellors and may decide to make the Chancellor a paid professional position, in which case the Board will select a mediator, psychologist, attorney or other professional for each available Chancellor position. The role of the Chancellor is more fully described in Part II of this Chapter Four.

The Board will also elect a Vice-President, a Secretary, a Treasurer, and other such officers as described in the Bylaws. These officers have the following responsibilities:

- **Vice President**. A Vice President, who is elected by the Board, takes the place of the President and performs the duties of the President whenever the President is absent or unable to act. If neither the President nor a Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President on an interim basis. A Vice President also performs such other duties as required by the Board or by the President and, except as specified, has all of the general powers and duties of a Vice President of a corporation organized under the Indiana

Nonprofit Corporation Act of 1991, as amended. If there is more than one Vice President, the Board determines which Vice President acts.

- **Secretary.** The Secretary is elected by the Board and (i) keeps the minutes of all meetings of the Association and of the Board of Directors; (ii) has charge of such books and papers as the Board directs; (iii) maintains a register listing the place to which all notices to Members and Mortgagees are to be delivered; (iv) upon request delivers statements of all unpaid assessments applicable to a particular parcel to be conveyed; (v) executes notices of delinquent assessment(s); (vi) executes notices of and releases of liens for delinquent assessments; and (vii) performs the duties of a Secretary described in the Bylaws and the Indiana Nonprofit Corporation Act of 1991, as amended.
- **Treasurer.** The Treasurer manages (i) the Association’s funds and securities; (ii) keeps full and accurate financial records and books of account showing all receipts and payments; (iii) prepares all required financial data; (iv) deposits money and valuables in the appropriate bank or other institution as designated by the Board; and (v) in general, performs of all the duties of a treasurer of a corporation organized under the Indiana Nonprofit Corporation Act of 1991, as amended.

The President and Directors are not paid for their services unless a majority of the Members approve such a resolution in writing. However, they are reimbursed for actual expenses. If one or more Chancellors are hired by the Board rather than elected, the Chancellors would be paid for service to the Association on terms negotiated by the Board. Chancellors may be hired on a part-time or as-needed basis.

For those decisions requiring Members’ approval, a Neighborhood Meeting provides a public opportunity for discussion and voting. As a convenient reference and not as a limitation, actions requiring a vote of the Members, or assent in writing, include the following:

Conveyance or Dedication of the Commons.....Chapter Two, Part I  
 Election of the Board, President and Chancellors.....Chapter Four, Part I  
 Repeal of Rules and Regulations adopted by the Board ..... Chapter Four, Part II  
 Approval of General Assessments when increased more than 15% .... Chapter Five, Part I  
 Ratification of expenditures for capital improvements ..... Chapter Five, Part I  
 Approval of Zone expenses ..... Chapter Five, Part I  
 Repeal of Additional Services.....Chapter Six  
 Amendment or Termination of Declaration .....Chapter Six

### Election Procedure

The Board regulates election procedure and sets policy concerning voter registration and the casting of ballots. The Board is to establish a voter registration program for residents who are not Titleholders and set standards for reasonable proof of residency in order to vote. A quorum for elections will be based on the number of votes allotted to Titleholders plus the number of registered voters who are not Titleholders.



The members elect the Board of Directors of the Association, its President and the Chancellor(s) (unless this is a paid position).

- **The Board:** A Member may cast his votes for as many candidates as there are Directors to be elected. A Member is not required to use all his votes; however, no cumulative voting shall be permitted. For example, if there are three seats to be filled and the Member has one vote, the Member may cast one vote each for one, two or three candidates, but shall not cast more than one vote for any particular candidate. If the Member is eligible to cast two votes, the Member may cast two votes apiece for up to three candidates. The candidates receiving the highest number of votes shall be declared elected. Directors may be elected by a plurality; a majority is not required.
- **President:** The President must be a member of the Board. Candidates for President must either also be running for election to the Board or be sitting on the Board with time remaining equal to the term of the President's office. If no candidate receives a majority of the votes for President, then the Board selects the President from between the two individuals with the highest number of votes.
- **Chancellor:** The Chancellors are also elected by the residents unless the Board has determined that the Chancellors are to be paid professional positions. However, if there are insufficient numbers of candidates for Chancellor, the Board may select the remaining Chancellors.

### Board Meetings

The Board usually meets on a monthly basis but may meet more or less often depending on the community's needs. The Board must meet at least four times a year. Notice of Board meetings is to be posted or members otherwise notified of the meeting schedule. Members are welcome to attend Board meetings, but their right to participate in discussion may be limited by meeting rules established and published by the Board. In unusual circumstances and to the extent permitted by law, the Board may go into executive session to discuss possible or pending litigation and personnel matters.

**Quorum:** Voting at a Board meeting requires presence of at least one-half of the Directors, in person or by telephone conference, or, if allowed by law, by proxy. While face to face meetings are beneficial and should be conducted when practicable, it may be difficult at times to get a quorum of Directors together in a timely manner. If permitted by law, any action required to be taken by vote of the Board may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the Board or by unanimous consent. With the approval of all Directors and if permitted by law, meetings may be conducted by electronic means.

**Records:** The Board must keep a record of all Board meetings and other Association meetings. For each action taken, the record should state the vote and a description of the action approved and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. Any Member has the right to review the

Association's records, at reasonable times, and can make copies or pay to have copies made for a reasonable fee. To the extent permitted by law, certain records may not be made available to Members if genuine privacy considerations exist.

### Neighborhood Meeting and Voting

Although the elected Board makes most decisions, election of the Board and certain other decisions require the participation of all Members. If permitted by the Board and applicable law, the membership may approve any matter (including the election of Directors) by a written vote conducted by mail, by electronic ballot, or by written consent without a meeting. Notice may be waived in the event of an emergency. Wherever used in this Village Book, "electronic means" or "electronic ballot" shall specifically include e-mail and, upon approval of the Board, other means of communication which may be developed in the future.

Rules about quorums and voting procedures are provided in the bylaws and may also be affected by applicable statutes.

### Use of Professional Management

The Board may hire a professional manager for the Association. Some typical duties of the manager are as follows:

- determining day-to-day maintenance needs and dispatching personnel or service providers as necessary (although major contracts would go through the Board and possibly a bidding process as well),
- supervising vendors, employees and service providers and making payment to them,
- collecting assessments (including past-due notices as necessary),
- keeping the books and records of the Association and preparing budgets and financial statements (and working with an accountant as necessary),
- mailing or posting notices of meetings, election information and other communications to Members, and
- answering inquiries from Members (and referring some questions to the Board or its attorney as necessary).

In contrast, Board members are not paid (except to be reimbursed for expenses). The Board selects the manager and must work with the manager and provide guidelines. Board members make such policy decisions as adopting the budget and determining assessment levels, making significant employment decisions and approving major contracts. They decide what major repair or replacement projects will be undertaken and the general level of service to be provided.

# 4.2 Community Life, Part II: Neighbors

This Village Book doesn't have long lists of rules. Instead, the concept is simple: neighbors shouldn't create unreasonable disturbances or unsafe conditions—and neighbors should tolerate a certain amount of noise, pets and exuberant children as part of a vibrant community.

## Use of the Parcel

**Residential and Business Uses:** Much of the Village is intended for residential use. However, certain Parcels are designated in the Village Design Code for commercial use. These commercial uses are an integral part of a pedestrian-friendly community and allow people to obtain some goods and services without having to use an automobile. Businesses must use reasonable measures to dispose of garbage properly and to minimize the impact of noise and odor on the surrounding area. However, residents near businesses need to recognize that a certain amount of noise and odor may be unavoidable. Owners of Residential property in the Village may not, through the Association, make decisions about the Village that significantly adversely affect the continued operation of businesses in the community. Only Owners of commercial property in the Village vote and decide upon issues that affect solely commercial properties.

**Home-based Businesses:** A home-based business that does not generate significant noise, odor or traffic is permitted in any residential area. The Board may establish reasonable hours of operation for home-based businesses that are visited by individuals. Signage for home-based business is regulated under the Village Design Code and may not be permitted.

**Garage Sales:** Garage sales, estate or yard sales, sample sales and similar kinds of sales activity from residential Parcels is permitted on an occasional basis. However, the holding of frequent sales from a particular residence will be considered a business and may be regulated by the Association.

**Leasing:** Residential Parcels or separate Residential Units within a Parcel, such as an outbuilding apartment, may be rented, so long as the residents comply with the covenants for neighborhood life contained in this chapter. The Association may establish a minimum lease term. The Association may require that the Owner reside on the Parcel if an outbuilding is to be rented. The Association may prohibit the leasing of any Residential Unit while the Owner is in default in the payment of Assessments and may attach rentals if the Residential Unit is leased while in default.

## Safety and Appearance

**Generally:** Each Owner must keep his Parcel in good order and repair and free from debris. the Village Design Code or the Association may regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks) and other matters affecting the attractiveness or safety of Parcels.

**Signage:** No sign, advertisement or notice of any type (other than building permits) shall be erected or displayed on any Parcel unless specifically permitted by the Village Design Code. "For Sale" or "For Rent" signs are permitted, subject to reasonable regulation.

**Vehicles:** the Village Design Code or the Association may regulate or prohibit the parking of trailers, recreational vehicles, nonfunctioning, oversized or excessive numbers of vehicles or equipment, and may require that garage doors be kept closed except when entering or leaving the garage.

**Sports Equipment:** Play structures, such as basketball hoops and swing sets, must be kept in good repair and their location may be limited, in accordance with the Village Design Code, to back yards or alleys. The Association may regulate or prohibit large play structures such as skateboard ramps that are visible from outside the Parcel.

**Temporary Structures:** the Village Design Code may prohibit or regulate construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Parcel. However, reasonable, occasional use of tents for festive occasions or children's backyard camping is part of life and should be enjoyed.

## Pets

Pets are welcome so long as the pets don't cause an unsafe condition or unreasonable disturbance or annoyance. The Association may regulate the number, type and size of pets (including particular breeds of dogs deemed to create unreasonable danger) and may prohibit the keeping of animals other than customary household pets, which it may define. The Association may designate specific areas within the Commons where pets may be walked, may prohibit pets on other areas, may require owners to collect and dispose of animal waste, and may require pets to be on leash.

## Rules and Regulations

The writing of rules is one way to address specific issues that arise within the community. The Association may adopt or amend rules and regulations interpreting or expanding upon the basic principles of this Chapter and other portions of this Village Book. Rules should strive to address the problem in the least restrictive way. A copy of the current Rules and Regulations will be made available upon request.

Rules and Regulations take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by at least 10% of the Members, a Neighborhood Meeting

must be called and, if a quorum is present, any Rule or Regulation may be repealed by majority vote of the Members.

The Board should review the Rules and Regulations regularly and remove or amend those that are unnecessary or overly restrictive.

### Role of the Chancellor

When problems with covenant enforcement arise, the Board or any resident or Owner may file a request with a Chancellor to hear the issue. If requested by the Board or the Chancellor to which the case is assigned, and if there is more than one Chancellor, the case will be heard by more than one Chancellor, sitting as a panel. The Chancellor or panel will notify the resident who is believed to be in violation, as well as the Owner of the Parcel, if different, and set a convenient date for a mediation session.

The object of the mediation session is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. Sessions must be conducted with tact, dignity and respect. The Chancellor or panel has the discretion to decide if the complaining party should participate in the mediation session.

The Chancellor or panel is to evaluate whether the resident has caused an unreasonable disturbance or other violation, and if so, to help reach a resolution within the general principles set out in this Chapter. If the parties reach agreement, the agreement is to be summarized in writing and signed by the parties. The Chancellor's office is to keep a copy of the agreement. The Chancellor or panel has the right to consider whether the same problem has arisen in the past and whether the resident has complied with previous agreements in evaluating the current agreement. If agreement is not reached, or if the parties do not comply with the agreement, the Chancellor or panel is to make a report and recommendation to the Board for further action.

### Enforcement

Each Owner and the Owners' family members, guests and tenants are required to abide by the covenants contained in this Village Book, which are covenants running with the land, and any Rules and Regulations adopted by the Association. Each Owner is responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner. If a violation cannot be resolved by the Chancellor, the Board is empowered to take necessary legal steps to enforce the covenants contained in this Village Book.

If the Chancellor determines that the problem is not satisfactorily resolved, the Board will notify the Owner of the date of the Board meeting at which the matter will be discussed. After hearing the report from the Chancellor and giving opportunity for the resident (and Owner, if different) to be heard, the Board may take any of the following actions:

- **Fines.** The Board has the right to assess fines up to the maximum allowed by law and may restrict the resident's use of the Commons for up to sixty (60) days or until the violation is remedied, whichever is longer. However, the primary goal of this chapter is

not to punish but to resolve problems. The Association may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Association.

- Pets. If the Board finds that a pet causes an unsafe condition or unreasonable disturbance or annoyance, it may require the resident or Owner to take steps to cure or limit the offensive condition. If such steps are ineffective, if the resident or Owner fails to cooperate or if the pet is considered to create an unsafe condition or unreasonable disturbance or annoyance, the Association may require that an Owner or resident permanently remove the pet from the Village.
- Corrective Action for Parcel Maintenance. If the Board determines that any Owner has failed to maintain any part of a Parcel (including the yard and any wall, fence, or building for which the Owner is responsible) in a clean, attractive and safe manner, in accordance with the provisions of this Village Book, the Village Design Code and applicable Rules and Regulations, the Board shall notify the Owner of its findings and may assess fines. If the violation continues for ten days after notice to the Owner, the Association shall have the right without liability to enter the Parcel to correct, repair, restore, paint and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Parcel Assessment. The Board may also assess a management fee for activities that it must take to correct, repair, restore, paint or maintain any part of such Parcel on behalf of an Owner.
- Tenant Violations. If after notice to both the tenant and the Owner and opportunity for a hearing the Board determines that a tenant has violated this Village Book or Rules and Regulations, the Association may assess fines against the Owner. In addition, if the violation continues for ten days after notice to the Owner of the findings, or if the tenant materially violates the same covenant more than once in any one-year period, the Association shall have the right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Parcel Assessment.
- Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Association shall also have the right to bring suit to enforce the covenants contained in this Village Book, including the right to an injunction.

## Quick View: The Chancellor, the Board and the President

	<i>The Chancellor...</i>	<i>The Board...</i>	<i>The President...</i>
<b>General Duties</b>	Hears and mediates covenant issues.	Makes major policy decisions concerning Association operation, maintenance of the Commons and budgeting decisions.	Makes day-to-day decisions within a scope of authority established in the bylaws or by the Board
<b>Role in Covenant Enforcement</b>	Brings the parties together to discuss possible covenant violations and mediates an agreement. If the agreement is not reached or is ineffective, the Chancellor presents the problem to the Board.	Has the power to enforce the covenants through fines, clean-up of Parcels (billed to the Owner), or legal action if necessary.	Carries out decision of Board.
<b>Special Qualifications</b>	None unless the Board converts the Chancellors to a paid professional position. Not required to be resident or Owner.	None. Not required to be resident or Owner.	Must be a member of the Board.
<b>Term of Office</b>	Two-year term. No limit on number of terms.	Staggered two-year terms, with a maximum of three consecutive terms.	One-year term, with a maximum of three consecutive terms.

### Dialogue

**Q. Why is the President elected by the members directly?**

A. In most associations, the president is elected by the Board of Directors. Election by the Members makes the President more responsive to the needs of the individuals within the community, not just the Board.

**Q. If I don't like the Chancellor's decision, is there a right of appeal?**

The Chancellors operate primarily as mediators. If they are unable to facilitate the reaching of an agreement between the Owner or Owners in question, they make a recommendation to the Board of Directors. The affected Owners have the opportunity for a hearing before the Board. The decision of the Board is final.

**Q. All owners of real property in the Village are members of the Association. Why are there special provisions concerning tenants?**

A. Special provisions concerning tenants are necessary because these covenants run with the land. Under real property law, the Association's only power of enforcement is against those who have taken title to property. The Association has no direct relationship with the tenant except as granted by the Owner.



# 5.1 Finance, Part I: The Association Budget

The Board of the Association is responsible for managing the Association's financial affairs. Although the members of the Board are not expected to make perfect decisions, the Directors are required to act reasonably in managing the Association's money.

## Accounting

The Association has two kinds of accounts: operating funds and reserve funds. Operating funds must be easily accessible and are used for day-to-day expenses. Reserve funds are the Association's savings and are to be invested to pay for major repair and replacement of the Commons.

The Association must prepare annual statements of its income and expenses, which are to be made available to each Member. Unless required by law or the Board, annual statements do not need to be audited.

## Budget

Financial planning begins with the annual budgeting process. The fiscal year of the Association begins January 1 of each year and ends on December 31 of that year, unless the Board selects a different fiscal year. The Board may appoint a committee to undertake the research for the budget, including holding hearings for Members. At least two months before the end of the fiscal year, the Board or its budget committee is to hold a budget meeting to consider the proposed budget for the coming year. Notice of budget meetings are to be posted so that Members can attend. The budget is adopted by majority vote of the Board. At least two weeks before the fiscal year to which the budget applies, the Board is to send to each Member a copy of the budget and notice of the amount of the General Assessments the Member will owe.

**Balancing a Budget:** Like any budget, the Association's budget has two main categories: expenses and income. The Board is responsible for estimating the expenses of the Association for the upcoming year, and then setting General Assessments—the Association's main source of income—at a level high enough to pay for the anticipated expenses. (The Association may have other minor income sources, such as interest on its accounts.)

**Expenses:** Some of the expenses to be included in the budget are mandatory, such as taxes, insurance, and required maintenance of the Commons. Anticipated fees for professional management of the Association, accounting services, legal counsel and other professional services should also be included in the budget. The Association also needs a certain amount of working capital—the cash flow necessary to make sure bills can be paid on time. Reserves, as

discussed further below, should be considered. Then the Board may add to the budget the cost of improvements it would like to make to the community.

**Budget Review:** Members have a limited right to review the budget. If General Assessments on Parcels are to be increased by more than 15% when compared to the previous year's General Assessment, and petitions signed by at least 10% of all Members request review within thirty (30) days after the budget is delivered to Members, the Board is to call a Neighborhood Meeting to present the budget and to answer any questions. After presentation, the budget is deemed approved unless a quorum of the Members is present and a majority of those present reject the budget. If the budget is rejected, the Board must approve a new budget within ten (10) days and send a copy to each Member.

**Interim Rules:** If the budget is challenged or if for any other reason the Board is late in approving the budget, members are not released from their obligation to pay General Assessments whenever the amount of such assessments is finally determined. Until a new budget is approved, each Member must continue to pay the assessment at the rate established for the previous fiscal year.

### Reserves and Deferred Maintenance

Although not required, it is recommended that the Association establish reserves for deferred maintenance, which are significant expenses that occur infrequently (in most cases, no more frequently than every five years). Without sufficient reserves, the Association will be required to levy a Special Assessment when these major expenses arise. Costs which reoccur more frequently or which are less expensive can probably be handled as an ordinary expense, although reserves may be established for these costs as well.

**Using Reserves:** When it is time to perform deferred maintenance, the Board can authorize use of the appropriate reserve fund. Reserve funds are an estimate; sometimes one reserve fund will have excess funds, while another will not have enough. If specifically authorized by the Board, reserves set aside for one purpose may be used for another purpose. (For instance, money set aside for resurfacing streets may be used for re-roofing a building.)

**Calculating Reserves:** The amount of reserve required is based on the life expectancy of the item, its replacement cost, and the amount of money already in the fund. Different items will require different calculations and different reserve funds. Once the amount of the reserve is determined, the reserve funds should be included in the budget and funded each year from General Assessments.

**Investing Reserves:** Although separated for the Association's internal bookkeeping purposes, the various reserve funds can be deposited in a single bank or investment account, to be invested in a prudent way. Because the reserves are the Association's savings, reserves must be kept in an account separate from the Association's operating account and must require more than one signature to be accessed.

**Excess Reserves:** If there is an excess of reserves at the end of the fiscal year, the Board may decide to reduce the following year's assessments for reserves. If the Board, by two-thirds vote, determines that a reserve is no longer necessary for its original purpose, it may assign all or part of the funds to a reserve for another purpose, or allocate the funds to the Association's operating accounts.

### Unanticipated or Extraordinary Expenses

Sometimes extraordinary expenses will arise during the year that the Association has no choice but to pay. This may include any unexpected expenditures not provided by the budget or unanticipated increases over the budgeted amounts. If insurance rates rise dramatically, an insurance bill may be much higher than budgeted. A casualty may cause extensive landscape damage that is not covered by insurance. When the Association is faced with a mandatory expense that cannot be paid from operating funds, it has two choices:

**Special Assessment:** The Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Village Book or the law requires the Association to pay, or for deferred maintenance for which reserves are insufficient. The Board may choose to spread the Special Assessment over a period of up to five years.

**Using Reserves:** If specifically authorized by the Board, reserves may be used for mandatory extraordinary expenses that are not included in the annual budget. However, rebuilding that reserve should be a priority in the next budget. A Special Assessment may be used to pay back the reserve fund.

### Capital Improvements

Most of the Association's expenses for the Commons are considered maintenance: repairing and replacing the original improvements. However, the Association may wish to change or add to the Commons' facilities. Not all capital improvements are expensive. These changes can be as small as a new park bench or as large as a new building. (Conversely, not all major expenses are capital improvements: resurfacing a swimming pool is deferred maintenance, not a capital improvement.) Capital improvements, except those proposed by the Founder, must go through the architectural review process.

Association expenditures for most capital improvements may be approved by the Board without membership approval. However, any substantial capital improvement to the Commons approved by the Board must be ratified by a majority of the Members. A capital improvement will be considered substantial if the cost to the Association of the improvement is more than six percent (6%) of the Association's annual budget or if, when added to other capital improvements for the fiscal year, totals more than ten percent (10%) of the Association's annual budget. If the substantial capital improvement is approved by the Members, the Board shall determine whether it is to be paid from General Assessments or by Special Assessments, which the Board may spread over a period of time up to five years.

## Zone Expenses

Zones are intended to provide a flexible means for providing additional maintenance or capital improvements to a small portion of the Village that has special needs. Zone boundaries may be designated at the time of the addition of the property by Supplemental Declaration, or at any later time by the Board. Some expenses apply only to certain Zones within the Village:

- Capital Improvements. Any Zone may, by two-thirds (2/3) vote of the Owners within that Zone and approval of the Board, vote to assess all Owners within the Zone for capital improvements to Commons which will primarily benefit that Zone.
- Additional Services. Any Zone may, by majority vote of the Owners within that Zone and approval of the Board, vote to assess all Owners within the Zone for maintenance or services in addition to those normally provided by the Association. For front-yard landscape maintenance, the Board may define a Zone by Parcel type and may approve landscape service for that Zone, which shall be effective unless a majority of the Owners within that Zone object in writing to the landscape service.

If the assessment is approved, it will be assessed to and allocated among all Owners within that Zone or designated group as Individual Parcel Assessments.

Zones may be combined for such assessments. If more than one Zone is to vote, the Board shall determine whether approval and assessment is to be by Zone or by the combined group of Zones. If a group smaller than a Zone wishes to be assessed for capital improvements or services, all of those being assessed must agree to the assessment.

## Contract for Maintenance

The Association may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Association, the cost of which will be assessed to that Owner as an Individual Parcel Assessment. The terms and conditions of all such contracts are at the discretion of the Board.

# 5.2 Finance, Part II: Assessments

The cost of meeting the Association's expenses is divided among all the Owners by the assessments levied on Parcels.

## Allocation of Assessments

The common expenses of the Association are to be allocated among the Parcels in accordance with the relative values described in the adjacent table. The fractional allocation of the common expenses of the Association may be calculated for each Parcel by dividing the value assigned that Parcel by the sum of the values of all Parcels within the Village. These are the Assessment Interests.

<i>Parcel Type</i>	<i>Relative Value</i>
Single-family	1.0 per unit
Multi-family	0.25 per unit
Commercial Uses	1.0 units for each 1000 square feet of net leasable commercial space
Special Use Parcel	Determined by the Founder based on anticipated use

A single outbuilding with a studio or one-bedroom apartment is not subject to assessment if the primary residence on the Parcel is assessed at 1.0 or greater.

If an Owner combines two Parcels or parts of Parcels and uses them as a single Parcel, the Association may assess them as a single Parcel or other formula adopted by the Board and consistently applied.

**Non-Profit Entities:** Parcels that are used by non-profit entities primarily for the benefit of residents of the Village may have a zero allocation. The Founder may grant such exempt status of record at any time up to and including the time of conveyance of the Parcel to someone other than the Founder. Once granted, such exempt status continues so long as the use of the Parcel remains substantially the same. The Board also has the authority to grant exempt status for qualified entities upon terms and conditions established by the Board.

**Commercial Use:** Commercial square footage includes all space that may be used for commerce, office, storage and other support areas for the commercial use. A home-based business which does not have signage or more than one employee other than the residents of the Parcel on which the business is located is considered a residential use. If a single Parcel includes both a commercial use and a residential dwelling, the residential dwelling (along with stairwells or other space used primarily for residential access) is not part of the commercial use but is to be assessed separately as a residential use. For purposes of calculating the allocation of expenses for

commercial parcels, net leasable square footage shall include all heated or air-conditioned space, measured to the center of the walls.

**Determination by Association:** The Board, using reasonable discretion, has the authority to determine the amount of assessed square footage for a particular Parcel. The Board may establish rules for the definition and calculation of square footage, the rounding of square footage to the nearest 100 square feet, assessment of unimproved lots, determination of residential and commercial use and other matters relating to assessment. The Association's agent may enter and examine buildings at reasonable times for assessment purposes. An Owner shall have the right to a hearing before the Board to appeal an assessment evaluation; however, the decision of the Board after the hearing is final.

### Transfer Fees

Certain assessments are paid upon the conveyance of property:

- **Capital Contribution:** At the closing and transfer of title of each Parcel to the first Owner other than the Founder or a builder, for resale, the purchasing Owner shall contribute an amount equal to three months' installments of the General Assessment. This contribution is to be deposited in the general funds of the Association for start-up expenses of the Association and for working capital for the Association and shall not be considered as a pre-payment of assessments.

The Capital Contribution (if then applicable) is not required to be paid by an institutional first mortgagee who acquires title as the result of a foreclosure or deed in lieu, but shall be paid by a third-party purchaser at foreclosure or upon the conveyance by the mortgagee to a subsequent Owner.

### Collection of Assessments

Each Owner of a Parcel is required to pay all Assessments (General Assessments, Special Assessments, Individual Parcel Assessments, and Capital Contributions assessed to that Parcel. The Association has the right to institute reasonable policies concerning late fees and interest, which the Owner is also required to pay.

**Collection Costs:** If any Assessment is still delinquent one week after the Association has delivered a warning letter to the Owner's last known address, the Association has the right to also charge the Owner with the Association's collection costs, including a reasonable attorney's fee, whether or not suit is brought. The Association may also establish late fees for delinquent payment of assessments.

**Legal Remedies:** The obligation to pay Assessments and costs is both a personal obligation of the Owner and a lien on the land. (The past-due Assessments, plus late-fee, interest to the time of collection and the Association's attorney's fees and other collection costs are called the "Assessment Charge.") The Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both.

- **Personal Obligation.** The Assessment Charge shall be the personal obligation of the person or entity that was the Owner of the Parcel at the time when the Assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel.
- **Creation of Lien.** The Assessment Charge shall also be a continuing lien upon the Parcel against which the Assessment Charge is made, which may be enforced upon recording of a claim of lien. Compliance shall also be had with relevant local, state, and federal laws. This lien, in favor of the Association, shall secure the Assessment Charge which is then due and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. Any subsequent owner of the Parcel shall be deemed to have notice of the Assessment Charge on the land, whether or not a lien has been filed.

The Association may bid for an interest in any Parcel foreclosed at such foreclosure sale, may acquire a Parcel, and may subsequently hold, lease, mortgage and convey the acquired Parcel.

**Other Remedies:** The Association shall have the right to suspend the voting rights and right to use of the Commons by an Owner, and may prohibit the leasing of the Parcel for any period during which any Assessment against the Parcel remains unpaid.

### *Notice to Purchasers*

If there are any Assessments unpaid on the Parcel, you will automatically become liable for those Assessments when you accept a deed. **You should contact the Association before purchasing a Parcel to make sure no Assessments are owed.** You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

The Treasurer of the Association, upon request of any Owner or contract purchaser, will furnish a certificate signed by a member of the Board stating whether assessments are paid to date by that Owner and whether any Special Assessments have been levied. Such a certificate, when co-signed by the Secretary of the Association, may be relied upon by a good faith purchaser or mortgagee.

## Quick View: Types of Assessments

	<i>What it's for....</i>	<i>How it's assessed...</i>
<b>General Assessments</b>	All of the regular, budgeted expenses of the Association, including the establishment of reserves.	Annually, payable in installments, based on the budgeted expenses of the Association.
<b>Special Assessments</b>	Substantial capital improvements approved by the Members, or any unusual or emergency maintenance or repair or other expense that the Association is required to pay and for which there is not enough money in the reserves.	As needed. At the discretion of the Board, payment of a Special Assessment may be spread over a period of time, up to five (5) years.
<b>Individual Parcel Assessment</b>	Any special services to that Parcel, for expenses approved by that Zone, or any other charges designated in this Village Book as an Individual Parcel Assessment	As needed.
<b>Capital Contribution</b>	Start-up expenses and working capital for the Association	Payment equal to three months General Assessments upon sale to first Owner.

## Dialogue

### Q. Why does the owner of apartments pay lower assessments per unit?

A certain amount of the Association's expense goes to administration and management. Multiple units owned by a single Owner, paying assessments for all of the units on a single bill, cost less for the Association to administer.

### Q. If I don't believe the Association is doing a good job, can I withhold assessments?

A. No. Dissatisfaction with the Association is not a legal defense to an assessment collection case. Other avenues, such as discussion at meetings, volunteering for committees or running for the Board, are available to improve the Association's performance.

### Q. Is the Capital Contribution for capital improvements?

A. No. The terminology is confusing, but the drafter chose to keep the two meanings of "capital" because both are commonly used in community associations. The Capital Contribution goes to the "working capital" of the Association—the cash flow the Association needs to be able to pay bills while waiting to collect assessments.

### Q. Can a company owned or controlled by a Director do business with the Association?

*Village Book of Operating Principles for the Village*

37



A. There is no prohibition against such contracts. However, when the Board considers the contract, the Director should disclose the interest in the company, and may vote if allowed by majority vote of the uninterested remainder of the Board in connection with such contracts. In addition, the terms of such contracts must be fair and reasonable—in general, comparable to what would be charged by an outside company.

# 6 The Future

It's impossible to envision all the things that might happen as the Village grows and matures. This Village Book tries to give the residents the tools and flexibility they need to confront issues as they arise.

## Additional Association Powers

To the extent permitted by law, the Association may, but is not obligated to, provide the following services or engage in the following activities:

- provide water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable television or communication lines and other utility services; supply of irrigation water; garbage and trash collection and disposal; laundry equipment or service;
- natural systems management; insect and pest control; improvement of vegetation and wildlife conditions; forestry management, pollution and erosion controls;
- emergency rescue, evacuation or safety equipment; fire protection and prevention; lighting of Common Roads which are not dedicated roads; restricted or guarded entrances, traffic and parking regulation and security patrols within the Village;
- transportation; day care and child care services; landscape maintenance; recreation, sports, craft and cultural programs; and newsletters or other information services;
- maintenance of easement areas, public rights-of-way and other public or private properties located within reasonable proximity to the Village if its deterioration would affect the appearance of or access to the Village; and
- any other service allowed by law to be provided by a community association organized under Indiana law.

The Board may, by majority vote, initiate or terminate any of the above services, which shall take effect sixty (60) days after notice to the Members, except in an emergency. As determined by the Board depending upon the nature of the service, the cost of any such additional service may be part of the common expenses of the Association, may be assessed as an Individual Parcel Assessment to affected Parcels or may be provided on a fee-for-service or other reasonable basis as determined by the Board. If requested by petitions signed by at least 10% of the Members, a Neighborhood Meeting may be called and, if a quorum is present, the Board's action to initiate or terminate an additional service under this section shall be repealed by majority vote of the Members. Upon such repeal, the Board may not reinstitute or terminate the service for five (5) years unless also approved by the Members, either by majority vote at a Neighborhood Meeting at which a quorum is present, or by written consent of a majority of the Members.

## Amendment

The Board may, by two-thirds vote, amend this Village Book (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify the Village Book's provisions or correct errors or inconsistencies, or (iv) to conform to any law then in effect.

This Village Book may also be amended at any time by an instrument signed by the President or Vice- President and Secretary of the Association, certifying approval in writing by Owners representing two-thirds (2/3) of the assessment interests, with the following limitations:

- Provisions concerning voting rights and allocation of assessments cannot be amended without the consent of two-thirds (2/3) of each category of affected Parcel Owners.
- Rights reserved to the Founder may not be amended without the specific consent of the Founder.
- Only commercial owners may vote to amend the Village Book on issues that affect commercial property only.

Any amendment takes effect upon its recordation in the public records.

## Duration

The covenants and restrictions contained in this Village Book shall run with and bind the Village and shall inure to the benefit of and be enforceable by the Founder, the Association and its Board, and all Owners of property within the Village, their respective legal representatives, heirs, successors or assigns for twenty (20) years, and shall be automatically extended for each succeeding ten year period unless an instrument signed by Owners representing 90% of the assessment interests in the Association shall have been recorded, agreeing to terminate the Village Book as of a specified date.

This Village Book may also be terminated in any of the following ways:

- Unanimous Consent. The Village Book may be terminated at any time by the consent in writing of all Owners.
- Dedication of Commons. The Village Book may be terminated by consent in writing by Parcel Owners representing two-thirds (2/3) of the assessment interests in the Association, if the Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (except that alleys or footpaths between two Parcels may be divided evenly between the adjacent Parcel Owners in accordance with this Chapter).

# 7 Definitions

**Articles.** “Articles” are the Articles of Incorporation of the Association. The initial Articles are attached at Exhibit D to the Declaration.

**Assessments.** “Assessments” is the collective term for the following Association charges, all as further described in Chapter Five:

- **General Assessment.** The “General Assessment” is the amount allocated among all Members to meet the Association’s annual budgeted expenses.
- **Individual Parcel Assessment.** An “Individual Parcel Assessment” is a charge made to a particular Parcel Owner for charges relating only to that Parcel, or for Zone charges.
- **Special Assessment.** A “Special Assessment” may be charged to each Parcel for capital improvements or emergency expenses.
- **Capital Contribution.** A “Capital Contribution “ is paid upon sale to the first Owner, for start-up expenses and working capital for the Association.

**Association.** “Association” is the Village Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

**Board.** “Board” is the Board of Directors of the Association.

**Bylaws.** The term “bylaws” refers to the bylaws of the Association, as amended from time to time. The initial bylaws are attached as Exhibit E to the Declaration.

**Certificate of Substantial Conformance.** The VARC issues a Certificate of Substantial Conformance when the primary building and landscaping are completed in substantial compliance with the approved plans and specifications. The certificate describes any minor areas of deficiency that need to be corrected.

**Certificate of Completion.** The VARC issues a Certificate of Completion in recordable form upon correction of all deficiencies noted in the Certificate of Substantial Conformance.

**Commons.** “Commons” comprises real property within the Village as designated on a plat or specifically conveyed to the Association, for the common use and enjoyment of all Owners. “Commons” also include any improvements on that real property, all utilities, utility easements and other easement rights or personal property for the Owners’ common use, and any other property of any type specifically designated as Commons. The Commons may include areas dedicated to the public to the extent that the Association agrees to maintain, or is required to maintain, such property.

**Common Roads.** “Common Roads” are the streets and alleys located within the Village that are intended for automobile traffic. Most of the Common Roads are intended to be dedicated to the public. Any Common Roads not dedicated to the public shall be part of the Commons.

**Declaration.** The “Declaration” is the Declaration of Covenants, Conditions and Restrictions for the Village, which is recorded in the public records of Porter County, Indiana, and as amended from time to time. This Village Book is an exhibit to the Declaration and is incorporated into the Declaration by reference.

**Founder.** The “Founder” is BH, LLC, an Indiana Limited Liability Company.

**Master Plan.** The “Master Plan” is the initial plan for the development of the Master Plan Area. The Master Plan is subject to change based on market conditions, governmental requirements and other modifications that may be made as development progresses.

**Master Plan Area.** As further defined in the Declaration, the “Master Plan Area” comprises approximately fifty-seven (57) acres intended for development as a single, unified traditional neighborhood development to be known as the Village.

**Member.** Each Owner of a Parcel in the Village is a “Member” of the Association.

**Mortgagee.** A “Mortgagee” is any institutional lender that holds a bona fide first mortgage encumbering a Parcel as security for the performance of an obligation. The term “institutional lender” specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency.

**Multi-family.** “Multi-family” Residential Units encompass of a variety of housing types that consist of three (3) or more Residential Units that each share at least one common wall, and shall include, without limitation, apartments and townhomes.

**Neighborhood.** The “Neighborhood” is the real property described on Exhibit B of the Declaration. The Village shall also include any additional property added by Supplemental Declaration.

**Neighborhood Meeting.** The “Neighborhood Meeting” is the public meeting of Members for discussion and voting, as described in Article 4.1.

**Owner.** “Owner” is the record owner, whether one or more persons or entities, of fee simple title to any Parcel. Owners shall not include those having such interest merely as security for the performance of an obligation, or condominium associations (but shall include the condominium owners individually).

**Parcel.** A “Parcel” is the smallest piece of real property that may be separately conveyed. A Parcel may be a lot (whether or not improved by a building), a Special Use Parcel, or certain Residential Units such as condominium units.

**Residential Unit.** A “Residential Unit” is an individual dwelling unit and shall include a townhouse or other attached dwelling (such as each half of a duplex unit), an apartment or condominium unit, a residential dwelling within a mixed-use building, or an assisted living facility unit (but not a nursing home).

**Single-family.** A “Single-family” Residential Unit shall include both detached homes and duplexes intended for use by a single housekeeping unit. Each ½ of a duplex is a Single-family Residential Unit.

**Special Use Parcel.** A “Special Use Parcel” is a Parcel of unconventional size, shape, location or use that calls for special design considerations. Typically, a Special Use Parcel will be used for commercial purposes, multi-family residential or community or recreation facilities.

**Supplemental Declaration.** “Supplemental Declaration” is any instrument that may be recorded by the Founder or the Association as provided in the Declaration to add Additional Property to the Village.

**VARC.** the Village Architectural Review Committee, or “VARC,” is the panel established by this Village Book to review and approve improvements and modifications to Parcels and the Commons.

**Village Book.** The “Village Book” is this the Village Book of Operating Principles, as amended from time to time. The original form of this Village Book is attached as Exhibit C to the Declaration.

**Village Design Code.** The “the Village Design Code” establishes the plan for the development of the Village through its regulation of land use, architecture and environment. The Village Design Code was originally adopted by the Founder and may be amended from time to time in accordance with this Village Book. The Village Design Code does not need to be recorded to be effective but shall be available from the VARC.

**Zone.** “Zones” are smaller areas within the Village of distinct building type or character. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone.

# Appendix: Early Years

This appendix contains information about how the community is to operate in the earlier years. It gives a timetable for various transitions from complete developer control to independence. When the transition is complete, this appendix is no longer necessary and may be disregarded.

## Board of Directors

The Association is created before the sale of the first Parcel. When the community gets started, the Founder selects the first Board of Directors and operates the Association because, quite simply, there's no one else there to do it. The Founder also has a major interest in seeing that the Association gets off to a good start so that the community is successful. For that reason, the Founder has a lot of control, and the owners have very little, in the beginning years. However, as the community matures, that responsibility begins to shift—first as the first two residents are elected to the Board, and later, when control of the Board is delivered to the residents. To allow the Founder to complete the development plan, the Founder retains some rights until development is complete, even though the Founder no longer controls the Board.

	<i>Occurs upon the first of the following...</i>	<i>What Happens Then...</i>
<b>Transition Point I</b>	<ol style="list-style-type: none"> <li>1. At least fifty (50) Residential Units have been purchased by individual owners, other than the Founder.</li> <li>2. Voluntary assent of the Founder.</li> </ol>	Members elect one (1) member of the Board of Directors of the Association.
<b>Transition Point II</b>	<ol style="list-style-type: none"> <li>1. At least one hundred seventy-five (175) Residential Units have been purchased by individual owners other than the Founder.</li> <li>2. Voluntary assent of the Founder.</li> </ol>	Members elect two (2) members of the Board of Directors of the Association. The Founder may designate two (2) Directors. If the Board is more than three (3) members, similar ratios shall be used such that Members elect a majority of the Board. The Founder continues to appoint the Village Architect and no changes can be made in the Village Design Code without the Founder's consent.

<p><b>Transition Point III</b></p>	<ol style="list-style-type: none"> <li>1. Completion of construction approval for all parcels; or</li> <li>2. Voluntary assent of the Founder; or</li> <li>3. T. Clifford Fleming is no longer the manager of Founder; or</li> <li>4. Founder is replaced by a successor or assign for any reason whatsoever, whether voluntarily or involuntarily.</li> </ol>	<p>The Board appoints the Village Architect. The Founder no longer designates a director or any member of VARC, and all remaining Founder's rights under this Appendix end.</p>
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When Transition Point I is reached, the Founder will offer training sessions to Members who are interested in learning more about how the Association operates. After the training sessions, residents will elect two Directors to the Board. At Transition Point II, Members elect a majority of the Board of Directors. The Founder may continue to designate three voting members of the Board of Directors until Transition Point III.

### The Commons

At the time that the first Parcels are conveyed to Owners, the Founder will still be developing portions of community, and this development will likely continue for a period of years. The Founder has reserved in the Declaration various easements and rights that it needs to be able to complete development of the community. The Founder may convey to the Association additional Commons as they are completed. The Association is required to accept these additional Commons for maintenance.

### Architectural Control

To allow the Founder to complete development in accordance with the Founder's vision for the community, the Founder shall have the right to appoint the Village Architect until Transition Point III. The Founder will also be responsible for the Village Architect's payment for work on initial construction issues during the period of time when the Founder appoints the Village Architect. The Association will be responsible for the Village Architect's costs in reviewing modifications. No changes can be made in the Design Code without the Founder's consent until completion of construction approval for all parcels.

### Finance

From the moment of creation, the Association needs to have its own bank account and funds, separate from the Founder. Annual statements of its accounts should be given to the residents.

**Association's Account:** Assessments are paid into the Association's account. Founder and Association expenses should be kept separate and paid from the appropriate account. This takes extra thought in the beginning; often the same employees or contractors are doing work for both the Founder and the Association. For instance, when the landscaper plants a tree, he is probably working for the Founder. When he mows the lawn, he is probably working for the Association.



### How the Guarantee Works:

If the Founder offers a guarantee of expenses, the Founder agrees to pay any Common Expenses incurred during the Guarantee Period that exceed the amount produced by General Assessments during that time. The Founder may start the "Guarantee Period" any time within the first three years after the recording of this Village Book in the public records. The Guarantee Period ends at the beginning of the next fiscal year, but shall be automatically extended for successive six-month periods up to an additional five years unless the Founder gives the Association a written termination notice at least 30 days before the end of the then-current Guarantee Period. During the Guarantee Period, the General Assessments may be increased by up to 15% per year.

**Initial Budget:** In the beginning, it may be difficult to determine an appropriate budget. The Founder, acting reasonably, will estimate the income and expenses that the Association will have once it gets well underway. That budget will be used to determine what is hoped is a reasonable assessment. The assessment needs to be high enough to give buyers a realistic idea of what their assessments are likely to be in the future, but not so high that buyers are discouraged.

**Founder's Assessments:** In the very early period of the Association, the Founder may either pay full assessments on the Parcels that it owns that have been made part of the Village, or pay the Association's deficit instead of paying assessments. When very few Parcels are sold, not enough income is likely to be generated to meet the Association's expenses. The Founder has a significant interest in seeing that the Association functions properly. By guaranteeing assessments, the Founder assures Owners that their assessments will remain within limits during the Guarantee Period, even though the Association hasn't settled into a predictable pattern yet, and agrees to pay any unexpected expenses. When any Guarantee Period is concluded, the Founder will have no obligation to pay any more than the assessments on the Parcels it owns, and when the Founder no longer owns any Parcels, it will have no obligation to pay any fees to the Association or be responsible for any repairs or improvements to the Village.

**Owner's Assessments:** Each Owner begins paying annual General Assessments from the time the Parcel is conveyed, prorated to the month of closing. The Owner may be required to pay the remainder of that year's General Assessments in advance. If there is a Special Assessment in effect for that Parcel, it will also be prorated to the month of closing.

### Additional Information

The Founder and the Founder's delegates to the Board must use reasonable judgment in maintaining the Commons and enforcing traffic control measures and providing security, if any, but neither the Association nor the Founder makes any representation or assumes any liability for any loss or injury.

## Quick View: Roles of the Founder and the Association

The Founder...	The Association...
Constructs the initial improvements on the Commons.	Maintains the improvements to the Commons and makes capital improvements or replaces improvements as it determines is appropriate.
Installs the initial landscaping on the Commons.	Maintains the landscaping of the Commons at the level of care it determines is appropriate.
Maintains an office and staff as necessary to conduct its sales operations and to fulfill its Founder duties.	Maintains an office and staff as necessary to manage the Association's affairs.
Prepares the initial estimated budget for the Association.	Adopts the initial budget and subsequent budgets.
Collects the Capital Contribution at closing and delivers it to the Association.	Collects assessments based on budget.

### Dialogue

**Q. What is "turnover"?**

A. The term "turnover" refers to the point at which the residents elect a majority of the Board of Directors. The Association, being a corporate entity, doesn't change, but the control of its Board of Directors does.

In the Village, turnover is a gradual process, consisting of three separate transition points, as the residents gradually grow into roles of more responsibility. Just as various cultures have coming of age ceremonies for their citizens, the Village could and should celebrate these transition points with appropriate ceremony.

**Q. While the Founder elects a majority of the Board, can the Directors vote to have the Association contract with companies the Founder owns or controls?**

A. There is no prohibition against such contracts, and because the Founder has a strong interest in the community, it may be appropriate for companies controlled by the Founder to perform Association work. However, the terms of such contracts must be fair and reasonable—in general, comparable to what would be charged by an outside company—and extra care should be taken with the Association's bookkeeping to make payments from the appropriate account.

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