

SUMMARY OF CHANGES

The Amended and Restated Declaration of Restrictions of Franklin Trace combines the separate Declarations of Restrictions for Sections 5A, 5B, 8, 9, 10, & 11 of Franklin Parke Estates, which are located in and have functioned as Franklin Trace since 2001. The primary purpose of the Amended and Restated Declaration of Restrictions of Franklin Trace is to create a single uniform set of Restrictions for the entire Franklin Trace neighborhood. Most of the proposed changes are technical in nature to accomplish the consolidation. There are some substantive changes from the existing Restrictions, which are as follows:

1. The language covering satellite dishes has been amended from a complete prohibition to allowing dishes less than one meter in diameter in compliance with Federal Law.
2. Two additional trees have been added to the landscaping requirements
3. All driveways must be concrete. Asphalt is not permitted.
4. Lot maintenance requirements are clarified.
5. Vehicle parking restrictions have been changed.
6. Wells may be allowed for irrigation and geo-thermal heating purposes only.
7. The percentage vote to amend the Restrictions is changed to 51% for Sections 9 & 11 to conform to the percentage required in the other Sections.

**AMENDED AND RESTATED DECLARATION OF RESTRICTIONS
OF
FRANKLIN TRACE**

THIS AMENDED AND RESTATED DECLARATION made this day of _____, 2011, by the Franklin Trace Property Owners' Association, Inc. (hereinafter referred to as the "Association"),

WITNESSETH:

WHEREAS, the Developer, Wheeler Development Corporation was the owner of all of the land in Sections 5A, 5B, 8, 9, 10. & 11, of FRANKLIN PARKE ESTATES, which lands have been subdivided into lots (all of which are hereinafter referred to as the "Development"), as more particularly described on the plats thereof recorded in the office of the Recorder of Marion County, Indiana, respectively as Section 5A - Instr. No. 1998-0192308; Section 8 - Instr. No 1998- 0192309; Section 5B - Instr. No 2000- 0041370; Section 10 - Instr. No 2000-0011371; Section 9 - Instr. No 2001-0026809; and Section 11- Instr. No 2001-0026810; and,

WHEREAS, in conjunction with and in furtherance of the development scheme for the Development the Developer further caused to be recorded in the Office of the Marion County Recorder a Declaration of Restrictions of Franklin Estates Sections 5(a) & 8, as Instr. No. 1998-0189384; a Declaration of Restrictions of Franklin Parke Estates Sections 5(B) & 10 as Instr. No. 2000-0041369; and a declaration of Restrictions of Sections 9 & 11 for Franklin Parke Estates as Instr. No. 2001- 0026808; (collectively referred to as the "Declarations"); and,

WHEREAS, on November 16, 2001, the Developer further incorporated the Franklin Trace Property Owners' Association, Inc. to serve as the non-profit homeowners association to serve the Development; and

WHEREAS, the six (6) Sections in the Development have operated as a single, unified neighborhood known as Franklin Trace under the auspices of the Franklin Trace Property Owners' Association, Inc., pursuant to signage placed in the neighborhood by the Developer; pursuant to continued operations since 2001 under the non-profit corporation established by the Developer; and pursuant to specific references contained in the Declarations of Sections 5A, 5B, 8, and 10; and,

WHEREAS, it has come to the attention to the Association and the Lot Owners, that the Declarations are deficient, and in need of amending to make them uniform and equally applicable within the Development: and

WHEREAS, Section 16 of the Declarations pertaining to Section 5(A) & 10, and Sections 5(B) and 8 and Section 13 of the declarations pertaining to Sections 9 & 11

permit the amendment of those declarations upon approval of the requisite number of owners within those Sections of the Development; and,

WHEREAS, the Association has obtained the approval of the requisite number of owners;

NOW, THEREFORE, the Association and the Lot Owners hereby declare that all of the "Declarations" heretofore recorded shall be of no force and effect, and that the platted lots and lands located within the Development and presently owned by the Lot Owners are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Amended and Restated Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the provisions of the Amended and Restated Declaration shall run with the land and shall be binding upon the Association and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Amended and Restated Declaration, and shall inure to the benefit of the Association and the Owners of any real estate in the Development.

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

A. "Committee" shall mean the Franklin Trace Development Control Committee, composed of three members appointed by the ~~Developer~~ **Board of Directors of the Association** who shall be subject to removal by the ~~Developer~~ **Board** at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the ~~Developer~~ **Board**. The ~~Developer~~ **Board** may, at its sole option at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Franklin Trace Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 10 of this Amended **and Restated** Declaration.

C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to ~~the Developer~~ or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

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

2. CHARACTER OF THE DEVELOPMENT.

- A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 89-Z-125. ~~However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.~~
- B. Prohibited Improvements. No sheds, outbuildings, above ground pools, ~~antennae, satellite disks,~~ lawn ornaments in side or front yards, nor clothes lines shall be erected or placed on any lot.
- C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. The foregoing is subject to the rules, regulations and ordinances of the City of Indianapolis and its Department of Metropolitan Development or appropriate entity.
- D. Other Amended Restrictions. All tracts of land in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

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

- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches,

terraces, garages, carports, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development but shall in no case contain less than one thousand six hundred (1600) square feet of living area for a one-story ranch or for more than a one story, one thousand two hundred (1,200) square feet for the first floor and six hundred (600) square feet for the second floor. Basements shall not be included in the computation of the minimum living area except for that portion of a walkout basement which is to be finished as a living area.

B. Residential Set-Back Requirements.

- (i) **In General.** Unless otherwise provided in ~~these Amended Restrictions~~ **Amended and Restated Declaration** or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.
- (ii) **Definitions.** "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.
- (iii) **Front Yards.** The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.
- (iv) **Side Yards.** The aggregate side yard set-backs shall total not be less than nineteen (19), and the minimum side-yard setback shall be seven (7) feet.
- (v) **Rear Yards.** The rear set-back line shall be at least twenty five (25) feet from the rear lot line.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the committee as to size, location, height and composition before it may be installed. No live tree with a trunk diameter of four (4) inches or more when measured four (4) feet above the ground or any community planting installed by the Developer may be removed without the prior written consent of the Committee.

D. Landscaping. Each home is required to have a minimum planting requirement of:

Front and Side Yard

2	Deciduous shade trees	2-2 1/2" caliper
1	Flowering tree	1-1 1/2" caliper
3	Conifer trees	8-10' height
6	Shrubs	3-4' height
10	Shrubs	18-24" spread

Two “Aristocrat” pear trees 2 ¼ to 3 inches in diameter along each street front which trees shall be planted between the sidewalk and the street. For a corner lot, there will be four trees.

E. Individual Yard Lights Required on Each Lot. At the time that the owner of the lot in the Development completes the construction of a home on his lot, he shall install or cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

F. Mailboxes and Address Blocks. Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee. All homes in the Development shall have an 8" by 16" limestone address block on the front side (sample - Riverside Stone).

G. Exterior Construction. ~~The finished exterior of~~ Every building constructed or placed on any lot in the Development shall be of material acceptable to and approved by the Development Control Committee. All driveways must be paved with ~~asphalt or~~ concrete from their point of connection with the abutting street or road. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick or stone to eave height of first floor and balance of exterior may be solid wood siding. Efflorescent brick shall not be used, nor shall irregular brick patterns be used. No plywood, aluminum, vinyl or composition siding will be permitted. No house shall have metal prefabricated flues that extend above the highest roof line. ~~All driveways must be paved with concrete.~~ The minimum roof pitch shall be 6/12. There shall be a separation of two (2) lots before a house type and elevation or color shall be repeated. The same house type and elevation or color cannot be located directly across the street from one another.

H. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Development must have at least an enclosed two-car garage, of the same architectural design and material as that of the house constructed on the lot.

I. Diligence in Construction. Every building whose construction or placement **begun** on any residential lot in the Development ~~is begun~~ shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

J. Sidewalks Required. Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis

Department of Transportation Standards 14-03. Sidewalks must be completed by the owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

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

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

- (i) Mow the lot at such times as may be reasonably required in order to prevent ~~unsightly~~ growth of vegetation **to a height in excess of 4"** and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees **and remove stumps.**
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.
- (vii) Contain all construction activity and materials to the lot, being improved; and at no time shall the street or adjacent lots (including drainage easements) be used for the delivery or storage of construction materials or construction debris.

M. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of ~~these Amended Restrictions~~ **this Amended and Restated Declaration**, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of ~~these Amended Restrictions~~ **this Amended and Restated Declaration**. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

N. Solar Panel Installation. Solar panel installation shall be allowed only when the location, type, and size have been approved by the Committee.

O. Sight Line Obstructions at Street Intersections. No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter any storm drain. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. Neither the Developer, nor the Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the City of Indianapolis, Department of Public Works Marion County or other governing body. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS AND REQUIREMENTS.

A. In General. No noxious or offensive activities shall be carried on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. **The following restrictions shall apply to the parking of vehicles:**

- (i) **Parking on the streets, which included both dedicated and undedicated streets, within the development is hereby prohibited, except:**
 - (a) **An owner's guests and visitors may temporarily (less than twenty-four (24) consecutive hours) park on the streets; and**
 - (b) **In case of special events, parties, or functions that necessarily require the owner or the owner's visitors to park on the street on a temporary (less than twenty-four (24) consecutive hours) basis.**
- (ii) **In the event that vehicles are parked on the street pursuant to subparagraph (i), vehicles should only be parked on one side of the street only. Vehicles shall not be parked directly across from other vehicles or on both sides of any street, so that the available thoroughfare is reduced to less than 1 ½ times the width of a standard sized automobile, or in any manner that will create a significant safety hazard.**
- (iii) **Any owner wishing to park his vehicles or a guest's vehicle on the street pursuant to subparagraph (i) for a period of longer than twenty-four (24) consecutive hours must submit a request in writing to the Board and receive written permission to do so. Unless written permission has been granted to an owner by the Board, under this subparagraph, there must be a minimum twenty-four (24) consecutive hour interval between each twenty-four (24) hour parking event.**
- (iv) **No large objects shall be placed or stored on any lot within the Development. For purposes of this subparagraph, the term "large object" includes, but is not limited to, trash dumpsters, portable storage units etc.**
- (v) **No vehicles or large objects of any kind may be parked or stored for any length of time on any lot or Common Area in the grass, yard or other non-paved portion of the lot or Common Area within the Development.**
- (vi) **No vehicles or large objects of any kind may be parked or stored on the street in front of any mailbox in such a manner that the vehicle or object disrupts or interferes with the routine mail delivery within the Development.**

~~No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development, except for the parking of such vehicle by a visiting house guest for a period not to exceed one (1) week; or the parking of such vehicle for a period not to exceed twenty-four (24) hours while it is being loaded, unloaded or prepared for use by the owner.~~

~~E. ——— Vehicle Parking. No trucks (one ton or larger), campers, trailers, commercial vehicles, boats, or similar vehicles shall be parked on any street or lot in the Development.~~

~~F.E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph GF below. All houses built in the Development shall be equipped with a garbage disposal unit.~~

~~G.F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or lot within the Development at any time, except at the times when refuse collections are being made.~~

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

~~H.H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, storage building, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.~~

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

~~K.J. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the appropriate governmental body where the streets are public and by the property owners where there are private drives, if any.~~

~~L.K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development. **Wells for irrigation or for the operation of geo-thermal heating and cooling systems shall be allowed only upon approval of the Committee.**~~

M.L. Prohibition of Antennas. Owners shall be permitted to place one (1) satellite dish, measuring less than one (1) meter in diameter, in the rear of their lot or on the rear side or rear roof of their house without the approval of the Committee being required. Owners may be permitted to place satellite dishes measuring less than one (1) meter in diameter in other locations on the lot or on the residence only after obtaining approval of the Committee. No other exposed radio, cable and television antennas and/or dishes shall be permitted within the Development.

6. UTILITY AND DRAINAGE EASEMENTS. There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on this plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph. No permanent structures or fences shall be erected or maintained upon said easements. The owners of lots in this Subdivision shall take and hold title to the lots subject to the Drainage Easements and Utility Easements herein created and reserved.

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

7. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however; to a reservation of ingress-egress for the maintenance of medians, if any, in any entranceways to the Subdivision.

8. FRANKLIN TRACE DEVELOPMENT ARCHITECTURAL CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to ~~these Amended Restrictions~~ **this Amended and Restated Declaration** and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

(ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Amended Restrictions;

(b) The design, building materials or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures.

(c) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

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

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within a reasonable time after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does ~~or~~ **not** make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Amended Restrictions and applicable regulations.

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying ~~these Amended Restrictions~~ **this Amended and Restated Declaration** to said lots, so long as the lots remain improved with one single-dwelling house.

10. OWNERSHIP, USE AND ENJOYMENT OF COMMONS AND LANDSCAPE EASEMENTS. "Commons" and "Commons Area" and "Landscape Easements" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the commons, is granted to the persons who are from time to time members of the Association.

Ownership of any commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons to the Association.

11. FRANKLIN TRACE PROPERTY OWNERS ASSOCIATION, INC.

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Franklin Trace Property Owners' Association, Inc.", which is referred to as the "Association". The Franklin Trace Property Owner's Association will include every owner of a residential lot is Sections 5; 5A, **5B**, 8, ~~8A~~, 9, 10 and 11. Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Amended Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of a semi-annual charge,

B. Classes of Membership. The Association shall have two classes of voting membership.

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) On the date the Developer sells the last lot and no longer owns any lots or land in the Development; or

(ii) On January 1, 2010.

C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such

agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain and repair the Common Areas and Landscape Easements shown on the plat(s) including improvements thereof.

(ii) The Association shall maintain the landscaping located in Landscape Easement and the landscaping and any entrance treatments located in the right-of-way at the entrance and shall keep such areas in a neat, clean and presentable condition at all times.

(iii) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(iv) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

(v) The Association shall provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of Common Areas

(vi) The Association shall be responsible for performing the Developer's obligation to maintain in good operating condition and repair the Drainage Facilities located on both the Development and on the property directly to the east of the development belonging to Richard W. and Mabel W. Canfield. This obligation is described in that EASEMENT AGREEMENT between Wheeler Development Corporation and Richard W. and Mabel W. Canfield dated August 9, 1996, and recorded in the office of the Recorder of Marion County, Indiana as Instrument No. 1996-0145862, and includes, but is not limited to, cutting of grass and weeds and removing silt, debris and other obstructions from that portion of the Drainage Facilities that are located upon the Canfield's Property.

12. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) semi-annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The semi-annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with

interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.

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

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

E. Date of Commencement of Semi-Annual Assessments: Due Dates. The semi-annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall

also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Amended Restrictions.

G. Subordination of the Lien to Mortgagee. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Amended Restrictions owed by the member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

13. REMEDIES.

A. In General. The Association or any party to whose benefit these Amended Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of ~~these Amended Restrictions~~ **this Amended and Restated Declaration**, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Amended Restrictions.

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

14. EFFECT OF BECOMING AN OWNER.

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

15. TITLES.

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

16. DURATION.

The foregoing Covenants and Amended Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1 2081, at which time said Covenants and Amended Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the Development.

17. AMENDMENT

This amended and Restated Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana executed by the Association and approved by a vote of at least fifty-one percent (51%) of the lot owners at a meeting duly called for that purpose.

17.18. SEVERABILITY.

Every ~~one of the Amended Restrictions~~ **provision of this Amended and Restated Declaration** is hereby declared to be independent of, and severable from, the rest of the ~~Amended Restrictions~~ **Amended and Restated Declaration** and ~~of and from every other one of the Amended Restrictions.~~ and ~~of and from every combination of the Amended Restrictions.~~ Therefore, if any of the Amended Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the ~~Amended Restrictions.~~ **Other provisions of this Amended and Restated Declaration.**