

**DECLARATION OF COVENANTS AND RESTRICTIONS
APPLICABLE TO LOTS IN BEAUTY CREEK VILLA HOMES, AN
ADDITION TO PORTER COUNTY, INDIANA**

NOVEMBER

This Declaration made this 2ND day of ~~October~~, 2005 by Naples-VPZ Development LLC, hereinafter referred to as "Owner" or "Developer".

RECITALS, INTENT AND PURPOSES

WHEREAS, the Owner holds title to certain real estate in Porter County, Indiana, which is more particularly described as "Final Plat Beauty Creek Villa Homes" attached hereto and incorporated herein by reference; and

WHEREAS, the Owner as Developer has caused a plat of subdivision to be approved by the Porter County Indiana Planning Commission and the same has been recorded in the Office of the Recorder on the 5th day of December, 2005 as Document No. 2005-037457.

49-F-6

NOW, THEREFORE, the Owner and Developer hereby declare that all of the property described on "Final Plat Beauty Creek Villa Homes" except Open Space A, B, C & Park Lot shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property. These easements, restrictions, covenants and conditions shall run with the real estate described in Exhibit "Final Plat Beauty Creek Villa Homes" as part of a general plan of development and shall be binding on all parties having or acquired any right, title or interest in the property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

ARCHITECTURAL CONTROL

No building, improvement, or other structure shall be commenced, erected or maintained on the property and no exterior addition, change or alteration shall be made until the plans, specifications, plot plan, and exterior elevations have been submitted to and approved in writing by the developer (Naples-VPZ Development, LLC), or its duly authorized agents or assigns. The submission so made shall also include the square footage of the proposed improvement. Architectural approval shall be the responsibility of the developer until 90% of the units have been built. At that time, the Property Owners Association shall create a committee and be responsible for approvals.

2005-037458

STATE OF INDIANA
PORTER COUNTY
FILED FOR RECORD
12/05/2005 03:51PM
LINDA D. TRINKLER
RECORDER

REC FEE: \$25.00
PAGES: 8

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| DULY ENTERED FOR TAXATION SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER |
| <div style="border: 1px solid black; width: 150px; height: 50px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> DEC - 5 2005 </div> |
| <i>Linda D. Trinkler</i> AUDITOR PORTER COUNTY |

The Owner and Developer, his employees, agents and representatives shall not be liable for any damage, loss or prejudice suffered or claimed by any owner or contractor who submits such plans on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and; (e) the development of any property within the Beauty Creek Villa Homes to Porter County, Indiana. Any person submitting plans to the Owner and Developer shall hold the Owner and Developer harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

ARTICLE II

USE/DESIGN RESTRICTIONS

A. CONVEYANCE. Each lot shall be conveyed as a separately designated and legally described freehold interest subject to the terms, conditions and provisions hereof.

B. USE. All lots in this subdivision shall be used for single-family attached residential purposes only.

C. MINIMUM FLOOR AREA STANDARD LOTS. The computation of square footage shall exclude porches, breezeways, garages and basements. All garages shall be attached to the principal residence structure and shall be sized for a minimum of two cars. Minimum square footage is per unit and is measured to the centerline of the building.

- 1.) All ranch & lofted ranch residential structures shall have a minimum of 1,600 square feet not including basement levels on normal or walkout lots. If the loft of a ranch exceeds 20% of the 1st floor square footage, it must meet the square footage minimums of a 1 ½ or 2 story.
- 2.) All 1 ½ and 2-story residential structures shall have a minimum total floor area of 1,900 square feet.
- 3.) Bi Level & Tri level homes shall be prohibited.
- 4.) No dwelling including value of lot shall have an initial offering price of less than \$199,900.

D. ROOF PITCHES. Roof pitches are to be a minimum of 6/12.

E. EXTERIOR.

1. All residential dwellings shall have on hundred percent (100%) face brick or stone on the front first floor exterior thereof.
2. Only horizontal pre treated cedar siding, cement board siding, stone, dryvit or brick may be used on the remainder of the structure. Vinyl siding, aluminum siding and 4x8 sheets of siding shall be specifically prohibited.

F. TEMPORARY STRUCTURES. No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn, or other building shall be used on the property at any time as a residence, either temporarily or permanently.

G. STORAGE SHEDS. No accessory storage shed or other additional structure shall be placed, erected or altered on any lot until the complete construction plans, site plan and specifications are approved pursuant to the section entitled, "ARCHITECTURAL CONTROL." Notwithstanding anything contained herein to the contrary, no more than one (1) additional structure shall be permitted on each lot. The total square footage of said additional structure shall not exceed one hundred twenty (120) square feet and the materials and color used on the exterior of said structure shall be the same as the materials and color used on the exterior of the residence located on said lot.

H. TYPE OF CONSTRUCTION. No building previously constructed elsewhere shall be moved upon any lot within this subdivision.

I. APPEARANCE. All plumbing stacks and roof vents or ventilators shall be located in the rear of the house roof.

J. DRIVEWAYS. All driveways are to be of rigid poured concrete or paver brick.

K. STORAGE. No recreational vehicle (motor home, trailer, boat, camper, etc.) shall be permitted to be parked on any lot or anywhere in the subdivision for more than 48 hours unless in a garage.

L. MAILBOXES. A standard mailbox approved by the developer shall be installed at the lot purchaser or homeowners' expense.

M. FENCES/POOLS. Fences no greater than (5') five feet in height may be constructed around side and rear yards of any lot in the subdivision. A (6') six foot height may be allowed if the same is required by ordinance or statute around a swimming pool after the pool has been installed. In any and all events, wood and chain link fences are prohibited from use anywhere in the subdivision. All fences shall be of PVC material, brick or wrought iron and of a design approved by the architectural committee. Architectural approval is required on a site plan with specifications prior to the installation of the fence. No above ground swimming pools shall be installed on any homesite.

N. SIDEWALKS. Any residence or dwelling house erected on any lot shall provide a five (5') foot public sidewalk of poured concrete along all street frontage and within the public right-of way.

Concrete sidewalks must be installed at time of construction prior to occupancy. Waiver may be granted December 1-April 1 due to inclement weather

O. CURBS. The lot purchaser or homeowner shall be responsible for the curbs installed by the developer. Should a curb be damaged during or after construction, the builder or owner shall replace damaged section within 90 days in a matter satisfactory to Porter County Highway Dept. Should owner fail to do this, developer may have the work done and record a lien against the property.

P. GRADING & EXCESS MATERIAL.

- 1.) Grading of lots shall be in compliance with the Porter County requirements and the master-grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent lot or lots.
- 2.) All excess material that is to be removed from any lot by reason of construction purposes shall not be removed from this subdivision. All such materials shall be used for fill purposes on any lot or lots within Beauty Creek whose existing grades are lower than the adjacent top of street curb as determined by declarant. At the prior written direction of the architectural review committee, said surplus material shall be removed and so deposited at the expense of the party charged with removing said material. Lot owners who are depositing excess material are responsible to level out material.
- 3.) No building debris or concrete (including washouts) is to be placed on any lot other than the lot they are working on at present time. All infrastructure are the responsibility of the builder/lot owner until Porter County accepts the subdivision. Owners, whether legal or reserve, are to maintain their lot(s) from debris, mowing and erosion.

Q. LOT MAINTENANCE. Builder or lot purchaser agrees to maintain lot and not allow weeds or grass to grow in excess of 6" in height. If builder fails to maintain lot, developer may hire a contractor to cut weeds and bill buyer or builder. Should bill not be paid within 30 days, developer may record a lien against the lot.

R. EROSION CONTROL. The front, side and rear yards of each lot shall be seeded or sodded in grass within nine (9) months after the Certificate of Occupancy is issued, furthermore all owners of record shall be responsible for Erosion Control maintenance of their lot from date of contract sale.

S. TREES. Homeowners shall be required to plant one (1) tree within ninety (90) days of occupancy between the structure and the sidewalk and 2 trees in the rear of home. On corner lots, three (3) trees must be planted (1 in front and 2 on side). Trees must be at least 1 ½" caliper. Developer shall have the right to plant and charge homeowner tree cost and labor for non-compliance with lien rights for non-payment within thirty (30) days.

T. **SOILS.** All soils are guaranteed suitable for normal building loads to a depth for a full eight (8) foot basement under the main structure and 8' garage footings. In the event unsuitable soil is found, it shall be the Owners option to refund all earnest money or repair soils to be suitable for building. In any event, all building is to cease until a mutual decision has been reached between the parties.

ARTICLE III

OWNERS ASSOCIATION

A. **OUTLOTS.** As shown on all the recorded Plats of this Subdivision, Open Space A,B,C and Park Lot &/or Detention Areas and Property Owners Association Park shall be platted and set aside for the specific purpose of utility easements, storm water management and park use.

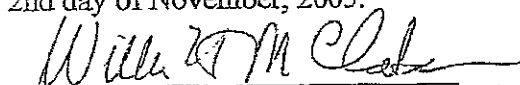
B. **PROPERTY OWNERS ASSOCIATION.** A Property Owners Association shall be created and incorporated for the express purpose of ownership of the Outlots and Park, and to ensure the high standards of maintenance and operation of the property in the Subdivision set aside for entrance monument, utility easements and storm water management. The Developer shall be responsible for the Property Owners Association Management until 80% of the units are occupied. At that time, a meeting of all owners shall occur and a Board of Directors elected from the Owners. The Board shall consist of a President, Vice President, Secretary and Treasurer. Bylaws of the Association will be approved and ratified by a simple majority of the owners present at the initial meeting, and may be modified as stated in the bylaws. This authority shall specifically not apply to Article 11 of this instrument. Every record owner of a fee simple interest in the lots in the Subdivision shall become and be a member of the Not-for-Profit Corporation, and each such member shall be entitled to one (1) vote for each lot owned by him on each matter submitted to a vote of members, provided, that where title to a lot is in more than one (1) name, such co-owners acting jointly shall be entitled to but one (1) vote. Each adjacent 1/2 lot as measured to the centerline of the unit on the Plat of the Subdivision shall be deemed to be a separate lot entitling the Owner thereof to one (1) vote for each such adjacent lot owned. All owners shall be responsible for annual assessments as determined by the Bylaws and Rules and Regulations established by the Beauty Creek Villa Homes Property Owners Association. Each assessment, together with such interest, costs and reasonable attorney fees shall be the personal obligation of the person who is the owner of such homesite at the time the assessment is levied.

C. **USE OF OUTLOTS.** All Owners of the Beauty Creek Villa Homes shall be permitted to use the area of the Outlots delineated on the Plat for any use not inconsistent with the Drainage and Retention designed for the Subdivision. No structure of any type or kind shall be erected, placed or altered nor shall any of the Natural areas be changed or disturbed on any Outlots in any manner by any party or lot owner.

B. ENFORCEMENT. The Owner or Developer, his heirs, successors and assigns, or any owner of a lot or any mortgagee of property within the subdivision, shall have the right to enforce any provision of this Declaration by any proceeding of law or equity. The failure to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Homeowners Association shall have the right to adopt and enforce violations through fines and shall have lien rights to enforce payment. In any litigation relating to the Declaration of Covenants and Restrictions, including litigation with respect to any instrument, document or agreement made under or in connection with the Declaration, the prevailing party as deemed by a court of competent jurisdiction shall be entitled to recover all of its litigation costs, expenses and reasonable attorney's fees.

Restrictions do not provide for forfeiture or reversion thereof.

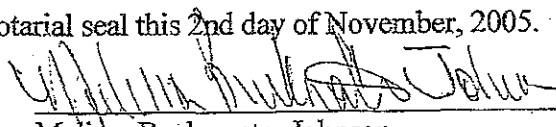
In witness whereof, Naples-VPZ Development LLC, has caused this instrument to be signed this 2nd day of November, 2005.


William McCabe, Managing Partner

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named William McCabe, and to me known to be such Managing Partner and acknowledged the execution of the foregoing Document for and on behalf of said Limited Liability Company and by its authority.

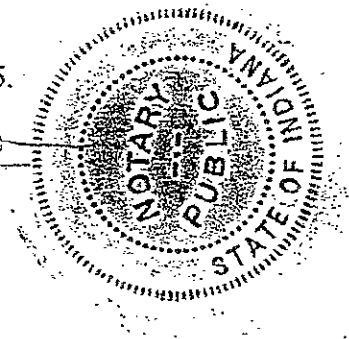
WITNESS my hand and Notarial seal this 2nd day of November, 2005.


Melissa Buckmaster Johnson

My Commission Expires: 9/20/06

County of Residence : Lake

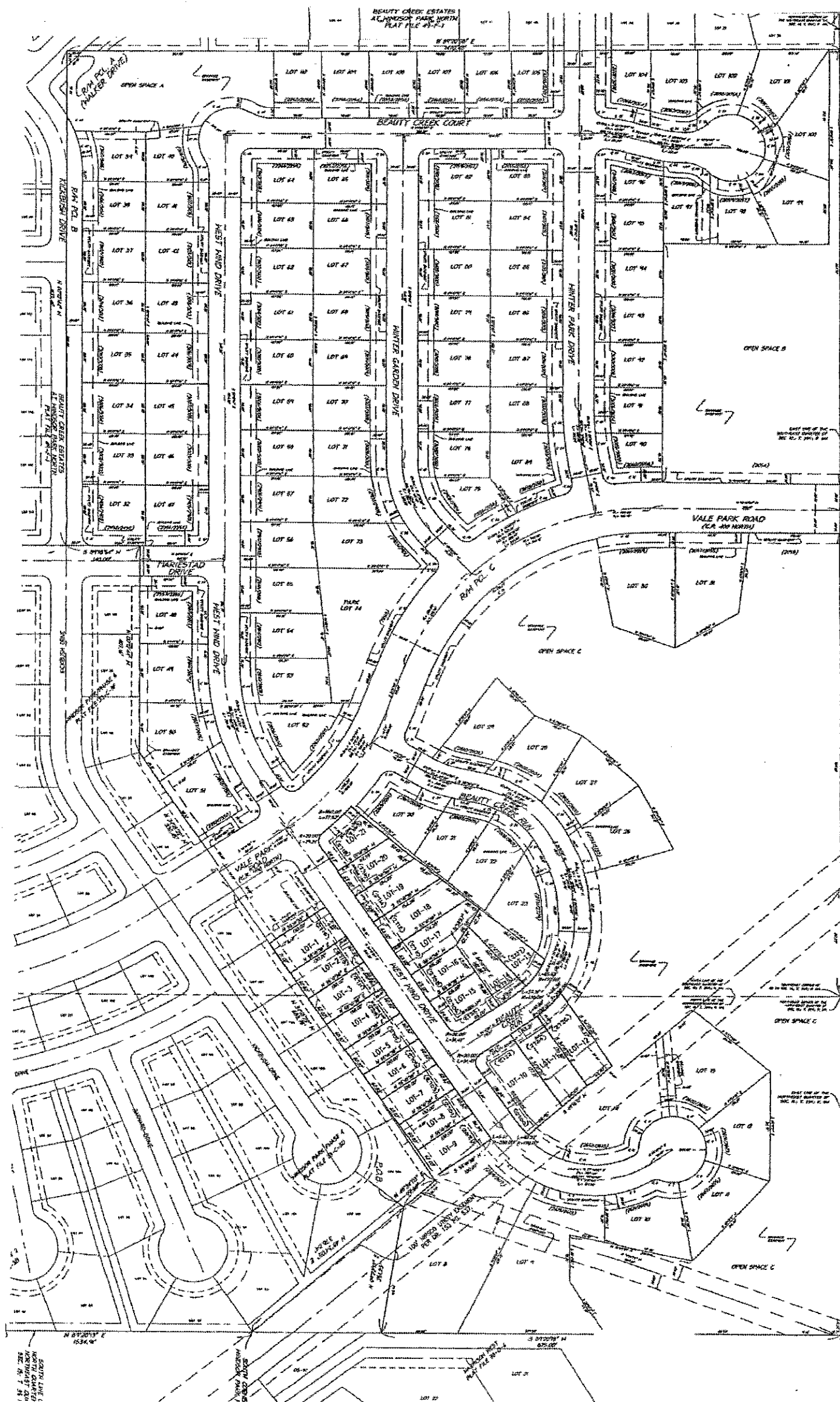
THIS INSTRUMENT PREPARED BY: William McCabe



DESCRIPTION OF BEAUTY CREEK VILLA HOMES

A parcel of real estate in the Southeast Quarter of Section 10 and the Northeast Quarter of Section 15, Township 35 North, Range 6 West of the Second Principal Meridian in Porter County, Indiana, described as follows:

Commencing at the Southwest corner of said Southeast Quarter, also being the Northwest corner of said Northeast Quarter; thence South 00°23'09" East 663.55 feet along the West line of said Northeast 1/4 to the South line of the North Quarter of said Northeast Quarter and said South line also being the South line of Windsor Park Phase 2 as per plat thereof, recorded in Plat File 33-C-3B in the Office of the Recorder of Porter County; thence North 89°20'13" East 1534.91 feet along said South lines to the Southeast corner of Lot 92 in said Windsor Park Phase 2; thence North 48°34'03" East 378.84 feet along the Southerly line of said Windsor Park Phase 2 and the Southerly line of Windsor Park Phase 4 as per plat thereof, recorded in Plat File 33-C-3D in the Office of the Recorder of Porter County to the Southeast corner of Lot 102 in said Windsor Park Phase 4 and the POINT OF BEGINNING; thence Northeasterly and Northwesterly along the Southerly and Easterly lines of said Windsor Park Phase 4 the following 2 courses and distances; North 48°34'03" East 77.60 feet and North 34°18'22" West 683.76 feet to the Northeast corner of Lot 108 in said Windsor Park Phase 4 said Northeast corner also being the Southeast corner of Windsor Park Phase 6 as per plat thereof, recorded in Plat File 33-C-3F in the Office of the Recorder of Porter County; thence Northwesterly, Northerly and Westerly along the Easterly and Northerly lines of said Windsor Park Phase 6 the following 3 courses and distances; North 34°18'22" West 330.45 feet, North 00°12'44" West 407.16 feet and South 89°18'54" West 140.00 feet to the Southeast corner of Beauty Creek Estates at Windsor Park North as per plat thereof, recorded in Plat File 49-F-1 in the Office of the Recorder of Porter County; thence Northerly and Easterly along the Easterly and Southerly lines of said Beauty Creek Estates at Windsor Park North the following 2 courses and distances; North 00°12'44" West 977.41 feet and North 89°20'58" East 1470.48 feet to the East line of the Southeast Quarter of said Section 10; thence South 00°31'23" East 1862.06 feet along said East line to the Southeast corner of said Southeast Quarter said Southeast corner also being the Northeast corner of said Northeast Quarter of Section 15; thence South 00°27'00" East 664.49 feet along the East line of said Northeast Quarter to the Southeast corner of said North Quarter of the Northeast Quarter of Section 15; thence South 89°20'13" West 875.00 feet along the South line of said North Quarter; thence North 09°22'12" East 251.23 feet to the Point of Beginning. Containing 71.79 acres more-or-less and subject to all legal highways and easements.



**SECOND AMENDED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR
BEAUTY CREEK VILLA HOMES**

This Declaration of Covenants, Conditions, Restrictions and Easements is made by Naples-VPZ Development, LLC (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described as Final Plat Beauty Creek Villa Homes and incorporated herein by reference (hereinafter, the Property). Declarant intends by this Declaration to impose upon the Property mutually beneficial restriction under a general plan of improvement for the benefit of all owners of residential property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property as is now or may be subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all real property described in Exhibit "A" shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of and which shall run with the Property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Assessments" shall mean Assessments for Common Expenses provided for herein or by any amendment which shall be used for the purposes of promoting health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units, Common Areas and Community Areas, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. The Assessment shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

Section 2. "Association" shall mean and refer to the Beauty Creek Villa Homes Property Owners Association, Inc., an Indiana non-profit corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana Law. The Association shall be organized and governed in accordance with the Articles of Incorporation, By-laws and Rules and Regulations, attached hereto as Exhibits "B", "C" and "D", respectively.

Section 3. "Common Areas" shall mean those parts or parcels of the Property the title to which are conveyed from time to time by deed from Declarant to the Association, to be thereafter held and owned by the Association for the benefit of the Owners and Residential Units.

Section 4. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association; the cost of owning, maintaining, repairing and replacing the Common Areas, landscaping, and exterior of the Residential Units; the costs of the Community Association, including Community Assessments; and the cost of meeting the obligations of the Association under this Declaration, including any reasonable reserves for performing the obligations, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-laws and the Articles of Incorporation of the Association.

Section 5. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

Section 6. "Developer" shall mean Naples VPZ Development LLC.

Section 7. "Mortgage" shall mean an instrument given as security to perform obligations, including a deed of trust.

Section 8. "Mortgagee" shall mean the Person to whom a mortgage is granted, including a beneficiary or holder of a deed of trust.

Section 9. "Mortgagor" shall mean the Person who grants a Mortgage, including the trustor of a deed of trust.

Section 10. "Occupant" shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by lease, license, contract or any other means, whether or not unlawful and shall include, without limitation, Owners, tenants, subtenants and their guests and invitees.

Section 11. "Owner" shall mean and refer to one or more Persons or entities who are record owners of a fee simple title to any Residential Unit which is a part of the Properties, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation, and excluding the Declarant.

Section 12. "Person" means a natural person, a corporation, a partnership, trustee or other legal entity.

Section 13. "Project" shall mean the property owned by Declarant and held for Exhibit "A" hereto.

Section 14. "Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto, as amended from time to time.

Section 15. "Residential Unit" shall mean one of the parcels located or to be located thereon, which is a part of the Property intended for independent ownership for use and occupancy as a single family residence. The boundaries of Residential Units shall be the lot lines for the parcels of the Property conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of Porter County or the City of Valparaiso, Indiana or other local government entity.

Section 16. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

Section 17. "Community Areas" shall mean those parts or parcels within the Beauty Creek Villa Home Development of the Declarant which are owned by the Community Association, Beauty Creek Villa Homes, Inc., for the benefit of the Owners and for the benefit of the owners within Beauty Creek Villa Home, Inc.

Section 18. "Community Assessments" shall mean and include the actual and estimated expenses of operating the Community Association; the cost of owning and maintaining common areas and proportional share of lawn and common area maintenance, which are owned by the Community Association for the benefit of all Owners within the Beauty Creek Villa Homes Development.

Section 19. "Community Association" shall mean or refer to Beauty Creek Villa Homes Property Owners Association, Inc, an Indiana non-profit corporation, and its successors and assigns.

ARTICLE II

PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Party Wall Rights, Restrictions and Easements. Subject to any other or additional provisions contained in any written agreement between the parties affected, each wall which is built as part of the original construction of a Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between Residential Units on and over such adjoining Residential Unit shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall will have a perpetual exclusive easement appurtenant to his or her Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his or her Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has shared the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute equally to the cost of the restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts of omissions. Notwithstanding any other provisions of this Declaration, any Owner who is by his or her negligence or willful act, or the negligence or willful acts of his or her occupancy causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contributions from any other Owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successor in title. Easements are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more Residential Units, whether or not such walls lie in all or in part within the boundaries of a Residential Unit. Every portion of a Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

Section 2. Easements of Ingress and Egress. Each Owner, as well as the lawful residents and Occupants of each Residential Unit, and their agents and contractors shall have and enjoy an easement for ingress and egress to and from their Residential Units, over and upon the lawn and landscaped areas of all Residential Units within a building which are connected in succession by party walls as provided in this Declaration, for the purpose of providing access to all parts of such Residential Unit for all purposes and activities associated with the normal and reasonable residential use of the Residential Unit, including, but not limited to, the maintenance, repair and replacement of the exterior of the building located on the Residential Unit and all lawn and landscaped areas and sidewalks which are a part of the Residential Unit.

Section 3. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or setting or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, Occupant or the Association.

Section 4. Easements for Utilities, Etc. Declarant and Developer hereby reserve for itself and its designee (including without limitation, the City of Valparaiso and any utility easements) upon, across, over and under the Residential Units and Common Areas for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Declarant or Developer by written agreement upon such terms and conditions as are acceptable to Declarant or Developer. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property.

Without limiting the generality of the foregoing, there are hereby reserved for the City of Valparaiso or South Haven Utilities, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing and maintaining water meters.

Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association's Board of Directors or as provided in the development and sale by Developer. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Property.

Section 5. Easement on Common Areas. Owners shall have an easement for use and enjoyment on the Common Areas, and Developer, Declarant and the Association grant each Owner an easement for full use and enjoyment, subject to the Association's right to suspend such easement while an Owner is in violation of this Declaration.

Section 6. Right of Entry. The Association shall have the right and license, but shall not be obligated, to enter into any Residential Unit for emergency, security and safety, which right may be exercised by policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. There is hereby granted to the Association, and its agents, employees, managers and independent contractors, a license to enter upon all Residential Units to the extent necessary or appropriate for the conduct of the Association's responsibility under Article IV.

Section 7. Easement on Community Areas. Owners shall have an easement for use and enjoyment of the Community Areas provided the Owners have paid all Assessments required under this Declaration and are not otherwise in violation of this Declaration or the declaration of the Community Association.

Section 8. Easement for Construction and Development. All of the Property shall be subject to easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities for the convenient use and enjoyment of the Property. In addition, there is hereby reserved by the Declarant and its agents and employees, an easement for right of ingress, egress and regress on and across all of the Property for the purpose of construction of the improvements within the Property, including the right of temporary storage of construction materials. Declarant reserves blanket easements and the right to grant such specific easements over all of the Property as may be necessary in conjunction with the orderly development of the Property described in Exhibit A or any Subsequent Amendment to this Declaration.

ARTICLE III
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership.** Every Owner, as defined in Section 12 of Article I, shall be deemed to have a membership in the Association. In the event the Owner of a Residential Unit is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. In no event shall more than one (1) vote be cast for each Residential Unit.

Section 2. **Voting.** The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 1 hereof. There shall be only one (1) vote per Residential Unit, and the vote for such Residential Unit shall be exercised as those Persons themselves determine and they shall advise the Secretary of the Association prior to any meeting as to that determination. In the absence of such determination, the Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may not assign the voting right appurtenant to that Residential Unit to the lessee.

The voting rights of Members shall be subject to the Declarant's rights and provisions of Article XVI.

ARTICLE IV
MAINTENANCE

Section 1. **Association's Responsibility.** The Association's responsibility shall be to:

- a) Maintain common areas with mowings a minimum of three times during June thru October.
- b) Maintain lawns with mowings once per week during April thru October, weather permitting, unless an exception or variance is granted on an annual non self renewing basis.

Section 2. **Owners Responsibility.** It shall be the obligation and responsibility of each Owner of a Residential Unit to cooperate in full and in good faith with each of the other Owners of Residential Units which are a part of the same building, with regard to performance of all maintenance, repair and replacement of portions of the building commonly shared but not maintained by the Association, including the cost thereof. For instance, if a main utility line (such as sanitary line) is shared, the cost of maintenance repair and replacement shall be shared equally. In the event of any dispute between or among Owners as to the foregoing obligation and responsibility, any one Owner shall have the right to require that such dispute be submitted to a simple majority decision of the Board of Directors of the Association, which decision shall be final and binding on all the Owners involved in that building.

ARTICLE V
INSURANCE AND CASUALTY LOSSES

Section 1. **Insurance.** Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association and all of its members as additional insureds for all damages or injury caused by the negligence of such Owner. The public liability insurance policy shall have at least Three Hundred Thousand (\$300,000) dollar single person limit as respects to bodily injury and property damage, and Five Hundred Thousand (\$500,000) dollar limit per occurrence.

The Association shall purchase a liability policy for the common areas with a minimum One Million (\$1,000,000) limit per occurrence.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the General Assessment, as defined in Article IX. Premiums for insurance obtained by Owners shall be paid by such Owners.

- A. All policies shall be written with a company licensed to do business in Indiana and in good standing with the State of Indiana. All such policies shall provide for a certificate of insurance for each Member to be furnished to the Association.
- B. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide the following:
 - 1. A waiver of subrogation by the insurer as to any claim against the Association's Board of Directors, its managers, the Owners and their respective tenants, servants, agents and guests;
 - 2. That no policy obtained by the association may be canceled, invalidated or suspended on account of any one or more individual Owners.
 - 3. That any "other insurance" clause in any policy exclude Association and Individual Owner's policies from consideration; and
 - 4. That no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 2. **Individual Insurance.** By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Residential Units and structures constructed thereon as provided for in Section 1 of this Article V. Each individual Owner further covenants and agrees that in the event of any loss of damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the structure is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association.

ARTICLE VI **NO PARTITION**

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may not be subject to this Declaration.

ARTICLE VII CONDEMNATION

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner and the Association shall be entitled to notice thereof.

ARTICLE VIII RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

Section 1. **Creation of Assessments.** There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article VIII, Section 6. Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments, together with a delinquency fee at the rate of 12% per annum if unpaid for 30 days or more, costs and reasonable attorneys' fees, shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time of the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless the Board otherwise provides, the Assessments shall be paid in yearly installments.

Section 2. **Computation of Assessment.** It shall be the duty of the Board, at least thirty (30) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) and fifteen (15) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. The budget shall include the Common Expenses, the Community Assessment, and appropriate reserves. The portion of the budget for the Community Assessment payable by the Owners shall be included in the Assessments, and the portion payable shall be paid to the Community Association and paid on a yearly basis. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current budget year shall continue for the succeeding budget year.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time and except for an Assessment caused by violation of this Declaration or the negligence or intentional misconduct of an Owner, its licensees or invitees.

Section 3. Special Assessments. In addition to all Assessments authorized in Section 1, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, however, such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of fifty-one (51) percent of a quorum of Members entitled to vote at a meeting called for that purpose. The Association may be reimbursed for costs incurred in bringing a Member and his or her Residential Unit into compliance with the provisions of the declaration, amendments thereto, the Articles of Incorporation, the By-Laws and Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

Section 4. Liens for Assessments. When a notice of the lien has been recorded such Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association following foreclosure: (1) No right to vote shall be exercised on its behalf; (b) No Assessment shall be assessed or levied on it; and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys fees shall be maintainable without foreclosing or waiving the lien securing the same. The Community Association may not enforce the Assessments against the Owners for Community Assessments by a lien, but shall be entitled to file suit to recover a money judgment and to prohibit use and enjoyment of the Community Areas while assessment are delinquent.

Section 5. Capital Budget and Contributions. In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both the amount and timing by Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 2 of this Article. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 6. Date of Commencement of Annual Assessments. The Assessments provided herein shall commence as to each Residential Unit on the day of the conveyance of title to an Owner by Declarant. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual Assessment shall be adjusted according to the number of months then remaining in that budget year. Declarant/Developer shall not be obligated to pay any Assessments.

Section 6.1 Vacant Lot Rate. No lot in the Subdivision on which construction of a dwelling has not commenced, shall be subject to any assessment, base, specific, or special, nor shall any assessments accrue or be incurred, base, specific, or special, on any lot on which construction of a dwelling has not commenced. Notwithstanding the foregoing, the Developer Rate for any lot shall not exceed twenty five dollars (\$25.00) annually. For purposes of this section, commencement of construction shall mean installation of a foundation for a dwelling. Upon commencement of construction, the lot shall be subject to assessment by the Association as provided for in the covenants and the bylaws of the Association.

Section 7. Subordination of the Lien to First Date of Trust and First Mortgages. The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any Mortgage upon any

Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment lien. However, the sale or transfer of any Residential Unit pursuant to judicial or non judicial foreclosure of a first mortgage shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Unit obtains title, his or her successors and assigns shall not be liable for the share of Common Expenses or Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Residential Units, including such acquirer, his or her successors and assigns.

ARTICLE IX

ARCHITECTURAL CONTROL

No building, improvement, or other structure shall be commenced, erected or maintained on the property and no exterior addition, change or alteration shall be made until the plans, specifications, plot plan, and exterior elevations have been submitted to and approved in writing by the developer (Naples-VPZ Development, LLC), or its duly authorized agents or assigns. The submission so made shall also include the square footage of the proposed improvement. Architectural approval shall be the responsibility of the developer until 75% of the units have been built. At that time, the Property Owners Association shall create a committee and be responsible for approvals.

The Owner and Developer, his employees, agents and representatives shall not be liable for any damage, loss or prejudice suffered or claimed by any owner or contractor who submits such plans on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and; (e) the development of any property within the Beauty Creek Villa Homes in Porter County, Indiana. Any person submitting plans to the Owner and Developer shall hold the Owner and Developer harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

ARTICLE X

USE/DESIGN RESTRICTIONS

Section 1. **Conveyance.** Each lot shall be conveyed as a separately designated and legally described freehold interest subject to the terms, conditions and provisions hereof.

Section 2. **Use.** All lots in this subdivision shall be used for single-family attached or detached residential purposes only.

Section 3. **Minimum Floor Area Standard Lots.** The computation of square footage shall exclude porches, breezeways, garages & basements. All garages shall be attached to the principal residence structure and shall be sized for a minimum of two cars. Minimum square footage is per unit and is measured to the centerline of the building.

- a) All ranch & lofted ranch residential structures shall have a minimum of 1,400 square feet not including basement levels on normal or walkout lots. If the loft of a ranch exceeds 20% of the 1st floor square footage, it must meet the square footage minimums of a 1 ½ or 2 story.
- b) All 1 ½ and 2 story residential structures shall have a minimum total floor area of 1,900 square feet.

- c) Bi Level & Tri Level homes shall be prohibited.

Section 4. Roof Pitches. Roof pitches are to be a minimum of 6/12

Section 5. Exterior.

1. All residential dwellings shall have sixty percent (60%) face brick or stone on the front first floor exterior thereof, and encouraged to use as much as possible.
2. Only horizontal pre-treated cedar siding, cement board siding, stone, dryvit, vinyl or brick may be used on the remainder of the structure. Aluminum siding and 4x8 sheets of siding shall be specifically prohibited.

Section 6. Temporary Structures. No structure of a temporary character by way of example, but not limited to a trailer, basement, tent, shack, garage, barn, or other building shall be used on the property at any time as a residence, either temporarily or permanently.

Section 7. Storage Sheds. No accessory storage shed or other additional structure shall be placed, erected or altered on any lot until the complete construction plans, site plan and specifications are approved pursuant to the section entitled, “**ARCHITECTURAL CONTROL**”.

Section 8. Types of Construction. No building previously constructed elsewhere shall be moved upon any lot within this subdivision.

Section 9. Appearance. All plumbing stacks and roof vents or ventilators shall be located in the rear of the house roof.

Section 10. Driveways. All driveways are to be of rigid poured concrete or paver brick.

Section 11. Storage. No recreational vehicle (motor home, trailer, boat, camper, etc.) shall be permitted to be parked on any lot or anywhere in the subdivision for more than 48 hours unless in a garage.

Section 12. Mailboxes A standard mailbox approved by the developer shall be installed at the lot at purchaser or homeowner's expense.

Section 13. Fences/ Pools. Fences no greater than (5') five feet in height may be constructed around side and rear yards of any lot in the subdivision. A (6') six foot high fence may be allowed if the same is required by ordinance or statute around a swimming pool after the pool has been installed. In any and all events, wood and chain link fences are prohibited from use anywhere in the subdivision. All fences shall be of PVC material, brick or wrought iron and of a design approved by the architectural committee. Architectural approval is required on a site plan with specifications prior to the installation of the fence. No above ground swimming pools shall be installed on any homesite.

Section 14. Sidewalks Any residence or dwelling house erected on any lot shall provide a five (5') foot public sidewalk of poured concrete along all street frontage and within the public right-of-way. Concrete sidewalks must be installed at time of construction prior to occupancy. Waiver may be granted December 1-April 1 due to inclement weather.

Section 15. Curbs The lot purchaser or homeowner shall be responsible for the curbs

installed by the developer. Should a curb be damaged during or after construction, the builder or owner shall replace the damaged section within 90 days in a manner satisfactory to the appropriate governmental agency. Should owner fail to do this, developer may have the work done and record a lien against the property.

Section 16. Grading and Excess Material.

- 1) Grading of lots shall be in compliance with the City of Valparaiso requirements and the master-grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent lot or lots.
- 2) All Excess material that is removed from any lot by reason of construction purposes shall be removed from this subdivision or shall be used for fill purposes on any lot or lots within Beauty Creek whose existing grades are lower than the adjacent top of street curb as determined by declarant. At the prior written direction of the Architectural Review Committee, said surplus material shall be removed and so deposited at the expense of the party charged with removing said material. Lot owners who are depositing excess material are responsible to level out material.
- 3) No building debris or concrete (including washouts) is to be placed on any lot other than the lot they are working on at present time. Owners, whether legal or reserve, are to maintain their lot(s) from debris, mowing and erosion.

Section 17. Lot Maintenance. Builder or lot purchaser agrees to maintain lot and not allow weeds or grass to grow in excess of 6" in height. If builder fails to maintain lot, developer may hire a contractor to cut weeds and bill buyer or builder. Should bill not be paid within thirty (30) days, developer may record a lien against the lot.

Section 18. Erosion Control. The front, side and rear yards of each lot shall be seeded or sodded in grass within nine (9) months after the Certificate of Occupancy is issued. Furthermore, all owners of record shall be responsible for Erosion Control maintenance of their lot from date of contract sale.

Section 19 Trees Homeowners shall be required to plant one (1) tree within ninety (90) days of occupancy in parkway between the curb and sidewalk and two (2) trees in the rear of the home. On corner lots, three (3) trees must be planted (1 in front and 2 on the side). Trees must be at least 1 ½ "caliper. Developer shall have the right to plant and charge homeowner tree costs and labor for non compliance with lien rights for non-payment within thirty (30) days.

Section 20 Basketball Equipment No basketball hoops or backboards are permitted on any Common Area, lot or Residential Unit.

Section 21. Control of Dogs. Under no circumstances whatsoever shall any dogs be allowed on common areas which are a breed known to bite people, such as pit bulls, Doberman pinschers, German shepherds, Rottweilers, etc. Every person owning or having possession, charge, care, custody or control of any permitted dog shall keep such dog exclusively upon his or her own premises; provided, however, that such dog may be off the premises if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 22. Rules and Regulations. Rules and Regulations concerning the use of the Residential Units may be promulgated and amended by the Association acting by and made through its Board of Directors each of which shall be deemed to be incorporated herein by referenced and made a part

hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same become effective. The initial Rules and Regulations are attached hereto, made a part hereof, and marked Exhibit "D". The Rules and Regulations set forth on are enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all the Owners, are in furtherance of a plan to provide for the congenial occupation of the Residential Units to promote and protect the cooperative aspects of ownership, the value of the Residential Units, and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community, and are not arbitrary and capricious. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said Rules and Regulations in accordance with the provisions of Article XI.

Section 23. **Fines.** Notwithstanding any other provision herein to the contrary, the Board may assess a fine not exceeding Fifty (\$50.00) Dollar per day for violations of Article X and the Rules and Regulations of the Association, and the Association may record a lien against the Residential Unit to collect such fines. The Association shall be entitled to impose such a fine provided: (1) the Association gives written notice of the violation to the Owner; and (2) the Owner does not respond within ten (10) days of receipt of the notice of violation. If the Owner objects to such notice of violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of Article X and the Rules and Regulations within ten (10) days of receipt of the notice of violation, and thereafter the Board shall consider all written evidence and shall make a final determination thereon within fifteen (15) days of receipt of the Owner's written material. The Association shall respond to an Owner's objection in writing with a final determination on the issue. If the Owner does not adhere to the Association's final determination, the Association shall be entitled to levy a fine.

ARTICLE XI **ENFORCEMENT**

Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of the Declaration and the Articles of Incorporation, By-laws, and the Rules and Regulations of the Association adopted pursuant thereto as may be amended from time to time. A default or violation by an Owner or Occupant of a Residential Unit shall entitle the Association, Declarant, Developer or any other Owner or Occupant to the following remedies:

Section 1. **Authority and Administrative Enforcement and Procedures.**

A. **Authority.** Residential Units shall be used only for those uses and purposes set forth in this Declaration, and subject to the Covenants, Conditions, Restrictions and Easements set forth herein, and in the By-laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Article VIII Section 3, which shall constitute a lien upon the Owner's Residential Unit, and to suspend an Owner's right to vote or use the Common Areas, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XI that an Owner or Occupant has violated any provisions of this Declaration, the By-laws, or the Rules and Regulations as duly promulgated.

B. **Procedure.** The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

1. **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.
2. **Notice.** If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written

notice of a hearing. The notice shall contain; (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf and (d) the proposed sanction to be imposed.

3. Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice, affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirements shall be deemed satisfied if a violator appears at the meeting.

C. Sanctions. The Board of Director's power and authority to impose sanctions shall be governed by the following provisions:

1. All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all circumstances, which may include, but shall not be limited to, the following:
 - a) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XI, and in otherwise attempting to remedy the violation.
 - b) The amount of actual damage done to the other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of the same.
 - c) The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the association or any Member thereof, or Occupant of a Residential unit.
 - d) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.
2. All Special Assessment amounts imposed hereunder as a sanction shall be deemed to be a part of the General Assessment attributable to the Residential Unit occupied by the Violator, and shall be assessed against said Residential unit and its Owner as a Special Assessment to be due and payable on the date the next General Assessment would be due, and any such Special Assessments which are not paid as of the date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as General Assessments.
3. Nothing herein contained shall be construed as granting to the Board of Directors the power of attorney to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific findings of fact in accordance with the foregoing procedure, that the violators conduct was intentional, willful and malicious in nature. Said findings of fact shall set forth all facts and circumstances.

4. All other sanctions imposed shall be reasonably related to the violation found.
5. The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

Section 2. **Legal Remedies.** In addition to the administrative remedies set forth in Article XI Section 1, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

Section 3. **No Waiver of Rights.** The failure of the Association, Declarant, Developer, Occupant or an Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, Articles of Incorporation, By-law's and Rules and Regulations or by law, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

Section 4. **No Election of Remedies.** All rights, remedies and privileges granted to the Association, Declarant, Developer, Occupant or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-laws and Rules and Regulations or by law, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

ARTICLE XII **AMENDMENT**

The Declaration and the Articles of Incorporation, By-laws, and Rules and Regulations may be amended in the following manner:

Section 1. **Declaration.** Subject to Article XIII, amendments to the Declaration shall be proposed and adopted as follows, provided however, that no amendment may revoke, remove or modify any right or privilege of the Declarant, without the Declarant's written consent.

A. **Notice.** Notice of the subject matter of any proposed amendment may be included in the Notice of any meeting of the Board of Directors at which any proposed amendment is to be considered.

B. **Resolution.** Except as provided in subparagraph D, hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the members (not three-fourths (3/4) of a quorum) at any regular or special meeting of the Members called and held in accordance with the By-laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).

C. **Recording.** The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Porter County, Indiana. A copy of such amendment shall also be sent to each Owner and his or her Mortgagee by registered or certified mail; provided, however, mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

D. **Amendments by Declarant.** Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other person (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal Home Mortgage Association, the

Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each entity, or (5) to add additional real estate by Subsequent Amendment or replat any real estate hereof. This subparagraph D. shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other persons having an interest of any kind in the Property, for so long as Declarant owns any Residential Unit or until the expiration of five (5) years from the date on which this Residential Unit is recorded, whichever occurs first. The amendment shall be signed by the Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Porter County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph C. hereof.

Section 2. Articles of Incorporation, By-laws, and Rules and Regulations. The Articles of Incorporation, By-laws, and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall insure to the benefit of and shall be enforceable by the respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceedings (including settlement of any suit or proceedings, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 3. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

ARTICLE XIV

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-laws of Beauty Creek Villa Homes Association, Inc. Where indicated, these provisions apply to "Eligible Holders", as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

Section 1. **Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written requests (such request to state the name and address of such holder, insurer or guarantor and the Residential Unit address) to the Association (therefore becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a) any proposed termination of the Association;
- b) any condemnation loss or any casualty loss which affects a partial portion of the Property or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- c) any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- e) any proposed action which would require the consent of Eligible Holders, as required in Section 2 of this Article.

Section 2. **Mortgagee's Rights Respecting Amendments to the Declaration.** To the extent possible under Indiana law, and notwithstanding the provisions of Article XII any amendment of a material nature must be approved by Eligible Holders representing at least fifty-one (51) percent of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a) voting rights;
- b) Assessments, Assessment liens, or subordination of Assessment liens;
- c) reserves for maintenance and repairs;
- d) boundaries of any Residential Unit;
- e) convertibility of Residential Units into Common Areas or vice versa;
- f) expansion of the Project (to include real estate not described in Exhibits "A" or not adjacent thereto), or the contraction of the Project or withdrawal of property to or from the Project;
- g) insurance or fidelity bonds;
- h) leasing of Residential Units;
- i) imposition or any restrictions on an Owner's right to sell or transfer his or her Residential Unit;

- j) a decision by the Association to establish self management when professional management had not been required previously by an Eligible Holder;
- k) a restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- l) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; provided however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holder's representing sixty-seven (67) percent of the votes of Residential Units; or
- m) any provisions that expressly benefit mortgage holders, insurers or guarantors.

Section 3. **Special FHLMC Provision.** So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- a) change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- b) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;
- c) fail to maintain liability insurance, as required by this Declaration.

The provisions of this Section 3 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a large percentage vote is otherwise required for any of the actions contained in this Section.

Section 4. **Mortgagee's Right to Cure.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of the policy and first Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.

ARTICLE XV **DECLARANT'S RIGHTS**

Section 1. **Control by Declarant.** In addition to any other right or privilege given or granted or reserved to Declarant and Developer under this Declaration, the Declarant and/or Developer shall have the right to elect all members of the Board of Directors of the Association for as long as the Declarant has 10% ownership in any of the Residential lots. The members elected by the Declarant and/or Developer need not be residents or Owners or Members.

Section 2. **Absence of Warranty.** The Declarant specifically disclaims any warranty or representation in connection with the Property or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation set forth herein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may be one relied upon.

Section 3. **Assessment Exemption.** Declarant and Developer shall be exempt from any Assessment levied by the Association on any or all Residential lots owned by the Declarant, which are vacant and offered by the Declarant and Developer for the first time for sale.

Section 4. **Right to Amend Declaration.** The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-laws and Rules and Regulations, in accordance with Article XII Section 1 D.

Section 5. **Transfer of Rights.** Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records of Porter County, Indiana.

Section 6. **Litigation Against Declarant or Developer.** The Association shall not commence any litigation against the Declarant or Developer until at least seventy-five (75%) percent of the Members have approved of that action in a meeting of the Members or in a written consent of the Members.

ARTICLE XVI

Section 1. **Replatting.** Declarant shall have and hereby reserves the right, at any time or from time to time, to file a replat of all or any part of the Property which is owned by Declarant or all or any real estate which is added to the Property by Subsequent Amendment.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed as of this 9th day of January, 2012.

NAPLES VPZ DEVELOPMENT, LLC

BY: Dennis M. McCoy
DENNIS M. MCCOY
William McCabe
WILLIAM MCCABE
James L. Wieser
JAMES L. WIESER
Melanie S. Sterba
MELANIE S. STERBA

STATE OF INDIANA >
> SS:
COUNTY OF PORTER >

ACKNOWLEDGEMENT

I, Melissa Johnson, Notary Public in and for said County in the State aforesaid, do hereby certify that Dennis McCoy, William McCabe, James L Wieser & Melanie S Sterba of NAPLES VPZ DEVELOPMENT, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Dennis McCoy, William McCabe, James L Wieser & Melanie S Sterba appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his or her own free and voluntary act, and as a free and voluntary act of NAPLES DEVELOPMENT LLC, for the uses and purposes therein set forth.

Given under my hand and seal this 9th day of January, 2012.

Melissa A. Johnson
Notary Public

My Commission Expires:

9/20/14

County of Residence:

Lake

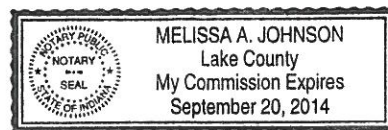


EXHIBIT "A"

Legal Description

Lots 1-110 in Beauty Creek Villa Homes, as per plat thereof recorded Dec 5, 2005 in Plat File 49-F-6, as Document No. 2005-037457, in the Office of the Recorder of Porter County, Indiana.

Re-Plat of Lots 2,3,4,5,6,7,15,16,17,18,19,24 and 25 in Beauty Creek Villas Homes Recorded Oct 12, 2007 in Plat File 49-F-6A as Document No. 2007-031025.

DN



2017-011806
STATE OF INDIANA
PORTER COUNTY
FILED FOR RECORD
05/19/2017 12:35 PM
JON MILLER, RECORDER
REC FEE: 16.00
PAGES: 2

**Amendment to
Second Amended Declaration of Covenants, Conditions,
Restrictions and Easements for Beauty Creek Villa Homes**

This AMENDMENT to Second Amended Declaration of Covenants, Conditions, Restrictions and Easements for Beauty Creek Villa Homes (hereinafter "Covenants") is made by Beauty Creek Villa Homes Property Owners Association, Inc. (hereinafter "Association").

Whereas, the Covenants were recorded on January 10, 2012, as Document No. 2012-000677, and in November 2016 the Developer (Naples VPZ Development, LLC) turned over governance of the Association to an elected Board of Directors; and

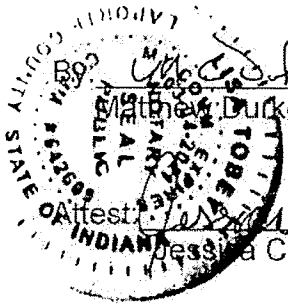
Whereas the amendment contained herein was approved by not less than 3/4 of the Association members at an annual meeting called and held in accordance with the Association Bylaws, and by not less than 3/4 of the Board of Directors;

Now Therefore, Section 20 of Article X of the Covenants is amended to read as follows:

Basketball Equipment: No portable or temporary basketball hoops, poles or backboards are permitted on any common area, Lot or Residential Unit. An Owner may only install permanent basketball hoop system (pole, backboard and rim) along the driveway between the Owner's sidewalk and Residential Unit after first obtaining written approval as provided below. Basketball equipment shall not be attached to any part of the Residential Unit. Prior to any installation of basketball equipment, the Owner shall submit a completed, signed modification form to the Board of Directors for written approval of the proposed location, brand and style of the equipment, and any other factors that may reasonably bear on the Board's decision.

In Witness Whereof, this AMENDMENT to Second Amended Declaration of Covenants, Conditions, Restrictions and Easements for Beauty Creek Villa Homes is signed on May 19, 2017.

Beauty Creek Villa Homes Property Owners Association, Inc.:

 Matthew Durkel
Matthew Durkel, President
Jessica Cowdrey
Jessica Cowdrey, Secretary

STATE OF INDIANA)
COUNTY OF PORTER) SS:

Before me, a Notary Public, in and for said County and State, on May 19, 2017, personally appeared Matthew Durkel, as President, and Jessica Cowdrey, as Secretary, of Beauty Creek Villa Homes Property Owners Association, Inc., and acknowledged the execution of the foregoing instrument to be their duly authorized act, and being sworn upon their oaths state that the representations herein are true.



(SEAL)

Lisa Tobey
Notary Public
Printed: Lisa Tobey
County of Residence: LaPorte
My Commission Expires: March 4, 2021

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

Prepared By: Attorney Michael B. Miller, 701 E. Lincolnway, Valparaiso, IN 46383