

DEC 06 2001

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RECORDER
PATRICIA J CRICK
ALLEN COUNTY, IN


AUDITOR OF ALLEN COUNTY

Doc. No. 201089112
Receipt No. 36030

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED
OF THE COVES OF MORGAN CREEK, A SUBDIVISION
WASHINGTON TOWNSHIP, ALLEN COUNTY, INDIANA

BCFD 3.00
MISL 1.00
PLAT 48.00
PLAT 9.00
Total 61.00

Plat Cab D Pg 153

Steeplechase Development Corp., an Indiana Corporation, by Joseph L. Zehr, its President, declares that it is the owner of the real estate shown and legally described in this plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference in this document. The platted subdivision shall be known and designated The Coves of Morgan Creek, a Subdivision in Washington Township, Allen County, Indiana.

The lots are numbered 1 through 20 inclusive, and all dimensions are shown in feet and decimals of a foot on the Plat. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

PREFACE

The Coves of Morgan Creek is a part of a tract of real estate which is designated as Morgan Creek. In addition to the recordation of the Plat of and this document, there will be recorded Articles of Incorporation of The Coves of Morgan Creek Community Association, Inc., it being Developer's intention that said association be bound by its Articles of Incorporation and By-Laws.

Section 1. DEFINITIONS. The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 "Articles". The Articles of Incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those Articles.

1.2 "Association". The Coves of Morgan Creek Community Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

1.3 "Board of Directors". The duly elected board of directors of the Association.

1.4 "By-Laws". The By-Laws adopted by The Coves of Morgan Creek Community Association, Inc., and all amendments to those By-Laws.

1.5 "Committee". The Architectural Control Committee established under Section II of the Covenants.

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1.6 "Common Area". All real property owned by the Association and by the Morgan Creek community Association, Inc., for the common use and enjoyment of Owners.

1.7 "Covenants". This document and the restrictions, limitations and covenants imposed under it.

1.8 "Developer". Shall mean Steeplechase Development Corp., and Indiana Corporation, Crossmann Communities Partnership, an Indiana General Partnership, their assigns, successors or successors in interest, and any person, firm or corporation designated by them or their said successor or successor in interest.

1.9 "Dwelling". The residential unit to be erected on a Tract, consisting of duplex construction to accommodate two single-families. Each such single-family dwelling constitutes a Dwelling. "

1.10 "Lot". Any of the platted lots within the Plat upon which a residential unit is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance.

1.11 "Residential Unit." A duplex consisting of two Dwellings.

1.12 "Tract". That portion of a Lot upon which the Dwelling is situate, the dividing line of which is determined by the common wall of the duplex unit.

1.13 "Owner". The record owner(s), (whether one or more persons or entities) of fee simple title to the Tracts, including contract sellers, but excluding those having an interest in a Tract merely as security for the performance of an obligation.

1.14 "Plan Commission". The Allen County Plan Commission, or its successor agency.

1.15 "Plat". The recorded secondary plat of The Coves of Morgan Creek.

1.16 "Subdivision". The platted subdivision of The Coves of Morgan Creek.

Section 2. PROPERTY RIGHTS.

2.1 Owner's Easements of Enjoyment. Each owner shall have the right and an easement of enjoyment in the Common Areas of Morgan Creek which shall be appurtenant to and pass with the title to every Tract, subject to the following rights which are granted to the Association.

2.1.1 To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against an Owner's Tract remains unpaid, or an Owner is in violation of the Covenants, the Articles, the By-Laws, or any published rule of the Association.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family, and tenants or contract purchasers who reside on the Owner's Tract.

2.3 Common Area Restrictions. The common area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3rds) of the lot owners (excluding the Developer).

Section 3. MEMBERSHIP AND VOTING RIGHTS.

3.1 Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Tract.

3.2 The Association shall have the following two classes of voting memberships:

3.2.1 Class A. Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Tract owned. When more than one person holds an interest in a Tract, all such persons shall be members. The vote for such Tract shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Tract.

3.2.2 Class B. Class B membership consists of Developer and its successor. The Class B member shall be entitled to 110 votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.2.2.1 When fee simple title to seventy-five percent (75%) of the tracts has been conveyed by Developer; or

3.2.2.2 on December 31, 2009.

Section 4. MEMBERSHIP IN MORGAN CREEK COMMUNITY ASSOCIATION, INC.

4.1 Each Owner of a Tract shall be a member of the Morgan Creek Community Association and shall be bound by the Articles and By-Laws of that Association.

4.2 Each Owner of a Tract shall be bound by Articles 2, 3 and 4 of the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approval's Appended to the Plat of Morgan Creek, Section I, a Subdivision in Washington Township, Allen County, Indiana; provided, however, that whenever such Covenants refer to a "Lot" the same shall be interpreted to mean "Tract", and an "Owner" shall be interpreted as the Owner of a Tract.

Section 5. COVENANT FOR MAINTENANCE ASSESSMENTS.

5.1 Creation of the Lien and Personal Obligation of Assessments. Each owner, except Developer, by acceptance of a deed for a tract, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: [1] annual assessments or charges and [2] special assessments as set forth in Section 5.4. Such assessments to be established and collected as provided in these Covenants and the By-Laws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Tract against which each such assessment is made. The lien is effective from and after recording a Claim of Lien in the Public Records, stating the description of the Tract, name of the Owner, amount due and the due dates. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Tract at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them.

5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for: (i) snow removal and lawn care; (ii) the payment of liability insurance and fidelity bond premiums; (iii) carrying out the duties of the Board of Directors of the Association as set forth in Article VII of the By Laws of The Coves of Morgan Creek Community Association, Inc., as amended from time to time; (iv) carrying out the purposes of the Association as stated in its Articles of Incorporation; and (v) as set forth in Section 9.1. hereof; and (vi) to provide for the proportionate burden of the maintenance of the common impoundment basin (and attendant water level control structures) into which the Subdivision's storm waters drain.

5.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Tract, the maximum annual assessment shall be \$600.00 per Tract.

5.3.1 From and after January 1 of the year immediately following such first conveyance of a Tract, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage of not more than 8% above the annual assessment for the previous year, without a vote of the membership.

5.3.2 From and after January 1 of the year immediately following such first conveyance of a Tract, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

5.4 Special Assessments. In addition to the annual assessment, the Association may levy, in any assessment year, a special assessment:

5.4.1 against any Tract whose owner, after notice from the Architectural Committee as provided in Section 11.7, neglects or refuses to replace the roof on the

Dwelling as required under Section 10.1. The assessment shall, when collected, be used to pay that Owner's pro-rata share of the cost of the roof replacement for the duplex Dwellings.

5.4.2 against any Tract whose Owner neglects to pay, within 30 days of the due date, any premium on the all risk insurance policy required under Section 10.1.2. The Association shall have the right, but not the obligation, to pay such premiums to maintain the insurance policy in full force and effect. The assessment shall be in the aggregate amount expended by the Association to maintain the policy in full force and effect.

5.4.3 against any Tract (and individually against the Owner personally), whose Owner, by his failure to adequately insure his Dwelling in an amount necessary to repair or replace the Dwelling, is unable to repair or replace the Dwelling, such assessment to be the amount of the shortfall between the insurance proceeds (if any) and the amount required to repair or replace the Dwelling. The assessment, when collected, shall be used to pay the balance of the cost of repair or replacement (the "shortfall").

5.5 Notice and Quorum for Any Action Authorized Under Subsection 5.3.2. Any action authorized under Section 5.3.2 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is less than the requisite percentage of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within 30 days of the date of such meeting.

5.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Tracts, except as provided in Section 9.2 and shall be collected on a monthly basis. The annual assessment as set forth in Section 5.23 shall include an assessment for common area maintenance and for Snow Removal and Lawn Care. As to snow removal and tract care, the Association shall provide for snow removal from paved portions of streets and sidewalks (but excluding driveways) and shall further provide for lawn cutting and fertilizing for each Tract. The portion of the annual budget allocated for Lawn Care and Snow Removal shall be assessed in accordance with the actual cost as determined by the annual contract with those service providers. The charges for each shall be shared equally by all Tracts except as provided in Section 9.2.

5.7 Date of Commencement of Annual Assessments. The annual assessment allowed under Section 4.3 shall be in force and effect on the first day of the month following the first conveyance of a Tract by Developer or its successor. The first annual assessment shall be based upon a partial year unless such conveyance is made in the first month of such year. The portion of the annual assessment for common area maintenance shall commence as to individual Tracts on the first day of the month following the conveyance of such Tract to Owner, pro-rated according to the number of months remaining in the calendar year at the time of conveyance (except for the initial year, when the pro-ration shall be based upon the partial year). That portion of the annual assessment for Grounds Keeping Services shall commence as to individual Tracts on the first day of the month

following the issuance of an Occupancy Permit for such Tract, pro-rated according to the number of months remaining in the calendar year at the time of issuance (except for the initial year, when pro-ration shall be based upon the partial year). The Board of Directors shall fix the amount of the annual assessment against each lot at least 30 days in advance of the date when the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The Association shall, upon demand and for a reasonable charge, furnish a certificate by an officer of the Association stating whether an assessment on a Tract has been paid.

Section 6. ESTABLISHMENT OF ASSESSMENTS.

6.1 The Board of Directors of the Association shall approve and establish all sums which shall be payable by the members of the Association in accordance with the following procedures:

6.1.1 The Annual assessments against the Owners of all of the Tracts shall be established after the adoption of an operating budget, and written notice of the amount and date of commencement thereof shall be given to each Owner not less than 30 days in advance of the date thereof. Annual assessments shall be payable at such time or times as the Board of Directors shall direct which shall be monthly until otherwise directed. Annual assessments shall include an amount for "Reserves for Replacement" so as to enable the Association to establish and maintain an adequate reserve fund for periodic maintenance, repair and replacement of improvements.

6.1.2 Special assessments against the Owners and all other fees, dues and charges, including assessments for the creation of reasonable reserves, may be established by the Board of Directors at any regular or special meeting thereof, and shall be payable at such time or times as the Board of Directors shall direct.

6.1.3 The Board of Directors may, from time to time, establish a resolution, rule or regulation, or may delegate to an officer or agent, the power and authority to establish specific fees, dues or charges to be paid by Owners of Tracts for any special or personal use of facilities, or to reimburse the Association for the expenses incurred in connection with the enforcement of any of the terms of this Declaration. Such sums shall be payable by the affected member at such time or times as shall be established by the resolution, rule or regulation of the officer or agent.

6.1.4 The Association shall prepare a roster of the Tracts and assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any Owner. The Association shall, upon demand, furnish an Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the assessment has been paid and/or the amount which is due as of any date. As to parties without knowledge of error, who rely thereon, such certificates shall be conclusive evidence of payment or partial payment of any assessment therein stated having been paid or partially paid.

Section 7. EFFECT OF NON-PAYMENT OF ASSESSMENTS.

7.1 If any assessment is not paid within 30 days after the due date, a late fee of \$25.00, beginning from the due date, shall be levied by the Board of Directors, for each month the assessment is unpaid.

For example: Owner A is delinquent in payment of his assessment for two [2] months. The computation of late fees is as follows:

1st month's late fees: \$25.00 for Assessment #1.
2nd month's late fees: \$25.00 for Assessment #2 and another \$25.00 for Assessment #1.

Total amount of late charges due after two months: \$75.00.
(\$25.00 for month #1 and \$50.00 for month #2).

The Association, on approval by the Board of Directors, may, at any time after a delinquency has continued for two [2] months, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. Any officer of the Association is authorized to execute any documents required to effect such action. Any such action shall include subsequent unpaid assessments and/or late charges. There shall be added to the assessment all costs and expenses, including attorney's fees required to collect same. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of the Tract.

7.2 Failure to pay assessments does not constitute a default under an insured mortgage.

Section 8. SUBORDINATION OF THE LIEN TO MORTGAGES.

8.1 As hereinabove provided in Section 5.1, the lien of the Association for assessments and other charges of the Association becomes effective from and after recording of a Claim of Lien in the Public Records and shall automatically secure all unpaid assessments, late fees and other charges, including attorney's fees which may become due from and after the recording of the Claim of Lien. The Claim of Lien shall be executed by an officer of the Association and shall comply with the requirements necessary for the recording thereof in Allen County, Indiana. This lien of the Association shall be subordinate to a first mortgage on any Tract, which mortgage is recorded in the Public Records prior to any said Claim of Lien against the same Tract being recorded in the Public Records. A lien for assessments shall not be affected by any sale or transfer of a Tract; provided, however, that in the event of a sale or transfer pursuant to a foreclosure of a first mortgage, a foreclosure of a mortgage held by an Institutional Mortgage, or deed in lieu of foreclosure by a first mortgage or a mortgage held by an Institutional Mortgagee, the acquire of title, his successors and assigns, shall not be liable for assessments pertaining to the Tract or chargeable to the former owner of the Tract which became due prior to such sale or transfer. However, any such unpaid assessments for which such acquire of title is

not liable, may be reallocated and assessed to all Tracts (including such acquire of title) as an Association expense. Any such sale or transfer pursuant to a foreclosure or deed in lieu of foreclosure shall not relieve the Purchaser or Transferee of a Tract from liability for, or the Tract from, the lien of any assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent assessments from the payment thereof, or the enforcement of collection by means other than foreclosure.

Section 9. MAINTENANCE OBLIGATION OF ASSOCIATION.

9.1 Grounds Keeping Services. Grounds Keeping Services as defined in Section 5.6, shall be provided by the Association for all Tracts. In the event that there is a fenced-in area upon a Tract, adequate access to this area shall be provided to enable the Association to perform this maintenance, but if none is so provided or if the access is locked or otherwise made inaccessible, then the Association shall not be responsible for providing any maintenance within this area, and the Owner thereof shall have such responsibility and shall not be entitled to claim any abatement of any portion of the Annual Assessment by the Association due to such situation. If the installation of fencing or additional landscaping by an Owner increases the cost to the Association of performing this grounds keeping maintenance, then the Board of Directors may cause such Owner to pay such increases as a Special Assessment.

9.2 Right of Entry by Association. Whenever it is necessary to enter a Tract for the purpose of inspection, including inspection to ascertain an Owner's compliance with the provisions of this Declaration, or for performance of any maintenance, alteration or repair to any portion of the Dwelling or improvements upon the Tract, the Owner thereof shall permit an authorized agent of the Association to enter such dwellings, or go upon the Tract, provided that such entry shall be made only at reasonable times. In the case of emergency such as, but not limited to, fire or tornado, entry may be made at any time. Each Owner does hereby appoint the Association as its agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused or occurring on account of any entry.

Section 10. MAINTENANCE OBLIGATION OF OWNERS.

10.1 Owner's Responsibility.

10.1.1 Each Owner is responsible for the repair, maintenance and/or replacement at his expense of all portions of the Dwelling, landscaping and other improvements constructed on his Tract excluding, however, Grounds Keeping Services as set forth in Section 9.2 hereof. Accordingly, each Owner shall maintain at his expense the exterior and interior of the Dwelling, including but not limited to the roof, all doors, windows, glass, screens, electric panels, electric wiring, electric outlets and fixtures, drains, plumbing fixtures and connections and all air conditioning equipment. Further, each Owner shall maintain at his expense all structural, electrical, mechanical and plumbing elements thereof.

10.1.2 Each Owner is required to carry on his Dwelling an all risk policy of insurance on a replacement cost basis. At or before Closing on the purchase of a Dwelling, the purchaser shall be required to produce proof of such insurance to the Board of Directors of the Association, including a copy of the insurance policy, which policy shall provide that the Association is an additional insured under the policy, and shall further provide that the Association is to be given written notice in the event the policy is terminated, or in the event any premium on the policy is not paid within 30 days of the date upon which it is due.

10.2 Owner Liability. Should any Owner do any of the following:

10.2.1 Fail to perform the responsibilities as set forth in Section 10.1 above;
or,

10.2.2 Cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or

10.2.3 Undertake unauthorized improvements or modifications to his Dwelling or to any other portion of his Tract or to the Common Area, as set forth herein.

10.2.4 The Association, after approval of two-thirds (2/3rds) vote of the Board of Directors and twenty days prior written notice (unless the Owner gives evidence to the Board of Directors that he is proceeding to remedy the failure(s) with due diligence), shall have the right, through its agents and employees, to enter upon said Tract and Dwelling and cause the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof, plus reasonable overhead costs to the Association, shall be added to and become a part of the assessment to which the Tract is subject.

Section 11. ARCHITECTURAL CONTROL.

11.1 Approval Necessary. No building, outbuilding, garage, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed or maintained on the Properties, nor shall any dwelling or other improvements on each Tract, as originally constructed and provided by Declarant, be altered, changed, repaired or modified unless prior to the commencement of any work thereof, two complete plans and specifications therefor, including but not limited to exterior colors, materials, and decorations, and also including, as applicable, front, side and rear elevations, and floor plans, and two plot plans indicating and fixing the exact location of such improvements, structures or such altered structure on the Tract with reference to the street and side lines thereof, shall have been first submitted in writing for approval and approved in writing by the Architectural Committee. The foregoing prior approval is intended to specifically apply to the painting of a Dwelling or any other maintenance or repair which changes the exterior appearance of a Dwelling or other improvements on a Tract.

11.2 Members. The Architectural Committee shall consist of five [5] members,

appointed by the Board of Directors. The members of the Architectural Committee shall serve at the pleasure of the Board of Directors. However, the initial Architectural Committee shall consist of the following three members: Charles S. Giese, Robert Estep and Joseph L. Zehr. After primary residences are constructed on all Tracts, the Board of Directors shall succeed to the initial Committee's responsibilities under this Section 11 to review subsequent construction, modifications and additions of structures.

11.3 Endorsement of Plans. Approval of plans, specifications and location of improvements by the Architectural Committee shall be endorsed on both sets of said plans and specifications, and one set shall forthwith be returned by the Architectural Committee to the person submitting the same. The approval of the Architectural Committee of plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver of the right of the committee to disapprove of any features or elements embodied in such plans or specifications, if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Units.

11.4 Construction to be in Conformance with Plans. After such plans and specifications and other data submitted have been approved by the Architectural Committee, no building, outbuilding, garage, fence, wall, retaining wall, or other improvements or structures of any kind shall be erected, constructed, placed, altered or maintained upon the Properties unless the same shall be erected, constructed or altered in conformity with the plans and specifications and plot plans theretofore approved by the Architectural Committee.

11.5 Right of Entry. Any agent or member of the Architectural Committee may at any reasonable time enter and inspect any building or property subject to the jurisdiction of the Architectural Committee under construction or on or in which the agent or members have reason to believe that a violation of the covenants, restrictions, reservations, servitude or easements is occurring or has occurred.

11.6 Fences. No fence, or other improvement, shall be erected upon a Tract which is deemed by the Architectural Committee to interfere with the maintenance performed by the Association, thereby increasing the amount of maintenance required to be done, or increase in any other manner the cost of maintenance by the Association, unless otherwise specifically agreed to in writing by the Association.

11.7 The Architectural Committee shall have the right and the obligation to require the Owners of Dwellings to replace the roof on a Residential Unit, in the reasonable opinion of the Committee, such replacement is necessary to maintain the outward appearance of the Residential Unit or to prevent water damage to the interior of the Dwelling(s). Notice of such requirement for replacement shall be sent, in writing, to each affected Owner, and such Owners shall have six (6) months to comply.

11.8 Non-liability of Architectural Control Committee. Neither the Developer, the Architectural Control Committee, the Association, nor any member, officer or director thereof, nor any of their respective heirs, personal representatives, successors or assigns,

shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee, the Association, or the Developer to recover any damages or to require the committee or the Developer to take or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Tract Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

Section 12. INSURANCE.

12.1 Dwellings. The Association has no responsibility to purchase or maintain any fire or hazard insurance with respect to the Dwellings or other improvements upon Tracts; the Owners thereof shall be solely responsible therefore.

12.2 Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all the Common Areas. The coverage shall be at least for \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuit related to employment contracts of the Association. Such policies must provide that they may not be canceled or substantially modified by any party, without at least 10 days' prior written notice to the Association.

12.3 Fidelity Bonds. The Association shall maintain a blanket fidelity bond for all officers, directors, trustees and employees of the Association, and all other persons handling or responsible for funds of, or funds administered by the Association. In the event the Association delegates some or all of the responsibility for the handling or responsible for funds of, or administered on behalf of, the Association. The amount of the fidelity bond shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than an amount equal to three months aggregate assessments on all Units, plus reserve funds. The fidelity bonds required herein must meet the following requirements:

12.3.1 Fidelity bonds shall name the Association as an obligee.

12.3.2 The bonds shall contain waivers by the insurers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee", or similar terms of expressions.

12.3.3 The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent, or its officers, employees and agents), shall be paid by the Association as a common expense.

12.3.4 The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Association.

12.4 Purchase of Insurance. All insurance purchased pursuant to this Section 12 shall be purchased by the Association for the benefit of the Association, the Owners and their respective mortgagees, as their interest may appear, and shall provide for the issuance of certificates of insurance and mortgagee endorsements to Owners and any or all of the holders of institutional first mortgages. The policies shall provide that the insurer waives its rights of subrogation as to any claims against Owners and the Association, their respective servants, agents and guests. Each Owner and the Association hereby agree to waive any claim against each other and against other Owners for any loss or damage for which insurance hereunder is carried where the insurer has waived its rights of subrogation as aforesaid.

12.5 Cost and Payment of Premiums. The Association shall pay the cost of obtaining all insurance hereunder, excluding only the insurance as may be purchased by individual Owners and any other fees or expenses occurred which may be necessary or incidental to carry out the provisions hereof.

12.6 Owners' Responsibility. Each Owner may obtain insurance, at his own expense, affording coverage upon his own personal property and for his own liability and living expenses as he deems advisable. All such insurance shall contain the same waiver of subrogation that is referred to herein and shall waive any right of contribution.

12.7 Association as Agent. The Association is irrevocably appointed agent for each Owner, for each Owner of a mortgage upon a Tract and for each Owner of any other interest in a Tract or the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

12.8 Estimates. In all instances hereunder, immediately after a casualty causing damage to the property for which the Association has the responsibility of maintenance and repair, the Association shall obtain a reliable, detailed estimate of the cost to place the damaged property in a condition as good as that before the casualty. Such cost may include professional fees and premiums for such bonds as the Board may desire or those required by Institutional Mortgagees involved.

Section 13. PROHIBITED USES.

13.1 Garbage and Trash. All garbage cans, trash containers, bicycles and other personal property shall be kept, stored and placed in an area not visible from outside the Dwelling. Each Owner shall be responsible for properly depositing his garbage and trash in garbage cans and trash containers sufficient for pick-up by the appropriate authorities. Garbage cans and trash containers shall be placed at the curbside no sooner than the evening before and removed no later than the evening of the scheduled pick-up.

13.2 Structures. No temporary or permanent utility or storage shed, building, tent, structure or improvement shall be constructed, erected or maintained without the prior approval of the Architectural Committee. Structures shall include, but not be limited to, play sets and/or jungle gyms, in-ground and above-ground pools, spas, hot tubs, and associated structures.

13.3 Pets and Animals. Pets and animals shall be permitted, only as provided for in this Section:

13.3.1 Animals and pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, lizards, gerbils, turtles, guinea pigs and rabbits, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing restriction shall apply to animals/pets which visit the community. No other animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot.

13.3.2 All dogs and cats must be inoculated against rabies by a duly qualified and licensed veterinarian and shall also be inoculated in like manner in such cases of emergency whenever ordered by the Board of Health of the State of Indiana.

13.3.3 When outside the Dwelling, all dogs and cats must be accompanied by an attendant who shall have such dog/cat firmly held by collar and leash, which leash shall not exceed 8 feet in length. No cats or dogs shall be permitted to run at large outside of the Dwelling; this shall not prohibit a cat or dog from being maintained without a leash or other restraint within any enclosed privacy area of the Tract in which the dog or cat resides and/or is maintained.

13.3.4 The owner/custodian of each animal and pet and/or the individual walking same, shall be required to clean up after the animal/pet.

13.3.5 The owner/custodian of the animal or pet shall remove his or her animal or pet from the Community when such animal or pet emits excessive noise such that the same may be heard outside of the Dwelling.

13.3.6 The animal/pet owner and the Tract owner of the Dwelling involved shall be strictly liable for damages caused to the Common Area of Morgan Creek by the animal/pet.