

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BENJAMIN CROSSING**

THIS FIRST AMENDMENT, dated December, 8, 2003, is made by Benjamin Crossing LLC, an Indiana limited partnership ("Developer").

**Recitals:**

A. Developer recorded a certain document entitled Declaration of Covenants, Conditions and Restrictions for Benjamin Crossing, dated February 3, 2003, and recorded on March 7, 2003, as Instrument No. 03009184 (the "Declaration"), in the Office of the Recorder of Tippecanoe County.

B. Section 9.2(f) of the Declaration provides that the Developer may amend the Declaration.

**Terms:**

NOW THEREFORE, the Developer hereby amends the Declaration as follows:

1. The list of utility providers referred to in Section 3.4(a) of the Declaration contained a typographical error, and is hereby amended and restated, as follows:

Name of Specific Provider:

Specific Service:

Tipmont REMC

Electricity

City of Lafayette

Water

City of Lafayette

Sewer

Vectren

Natural Gas

Verizon

Telephone

Insight Communications

Cable

2. Article III is hereby amended to add the following new subparagraph 3.13 to such section:

**Private Lane Easements:** Private Lane Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of the Developer, the Association and the Owners of Lots abutting such Private Lane Easements for ingress to and egress from such Lots, as well as for the installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Each Owner shall be responsible for the maintenance of any landscaping within the Private Lane Easement affecting such

Owners's Lot. In the event such Owner does not maintain such landscaping in a manner reasonably acceptable to the Developer or the Association, then the Developer or the Association, as the case may be, shall have the right to perform such maintenance, and seek reimbursement for the costs thereof from such Owner in accordance with the procedures available to the Association for the collection of Assessments. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Private Lane Easements without the written consent of the Board and provided such are in accordance with the terms of this Declaration and all applicable zoning laws.

3. Article III is hereby amended to add the following new subparagraph 3.14 to such section:

**Perpetual Non-Buildable Easement:** There are strips of land measuring six (6) feet in width, as depicted on the plat, which are identified as Perpetual Non-Buildable Easements (P.N.E.), which P.N.E. may be located either separately or in combination with other easements. Each P.N.E. is reserved for maintenance and fire protection. Except as provided below, no structures shall be erected or permitted to remain upon such strips of land, and the Owners of Lots subject to a P.N.E. shall take and hold title subject to the reservation of such easement. The following uses and improvements are strictly prohibited within a P.N.E.: fences (other than Permitted Fences), decks, window or wall mounted air conditioning units, bay windows, eaves and overhangs, chimneys, balconies and storage sheds. The following uses and improvements are permitted within the P.N.E. (so long as such are approved by the Association or originally installed by Developer and otherwise permitted by local ordinance, as applicable), and shall not constitute permanent structures for purposes of a P.N.E.: Permitted Fences (as defined below), grade level patios or stoops, HVAC equipment (including compressor units and related equipment), utility service meters and connections (including but not limited to gas, electric, telephone, cable, satellite and aerals). "Permitted Fences" shall mean a fence which otherwise complies with the restrictions set forth in the Declaration and is approved by the Association, and which: (a) is perpendicular to the side wall of the subject residence; and (b) terminates at a point such that there exists at least three feet (3') between such point and the property line of the subject Lot.

4. Article VII, Section 7.4, entitled "Parking and Prohibited Vehicles," is hereby deleted in its entirety, and replaced by the following paragraph:

**"VEHICLE PARKING:**

a) *Parking.* Vehicles shall be parked in the garages or on the driveways serving the Lots. No motor vehicle, whether or not utilized by an Owner, shall be parked on any Private Lane or any other street or public right-of-way; provided, however, that parking may be permitted on certain dedicated public street within the Development. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles, which may be parked therein below the number for which the garage was originally designed.

No Owners or other occupants of any portion of the Development shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) *Prohibited Vehicles.* Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed at the expense of the Owner."

5. Article VII is hereby amended by amending and restating Section 7.23 thereof in its entirety, as follows:

**No fencing shall be installed on any Lot without the prior review and approval of the Committee (which is defined in the Declaration as the Architectural Control Committee of the Association). The Committee shall have approval on all aspects of any proposed fencing, including but not limited to size, location, height and composition. Fencing restrictions are as follows:**

(a) General Restrictions: The following restrictions are applicable to all Lots within the Development:

(i) *Approvals.* Any fencing shall be subject to the prior approval of the Committee.

(ii) **Fencing Types and Materials.** All fencing shall be constructed of white vinyl, white picket style (4' in height vinyl or painted wood), black vinyl coated chain link, black wrought iron style materials, or wood fencing. Wood fencing is permitted in most locations; however, the ACC Committee reserves the right to approve certain fence types on perimeter and highly visible lots within the community (See section (d) (ii) below). A brochure showing an example of fencing to be installed must be included with the application to the Committee.

(iii) **Fencing Colors.** Fencing shall be either white, off-white, neutral, or earth toned colors. All wooden fencing must be waterproof, stained and/or painted. Chain link is only permitted to be black vinyl coated and wrought iron must be black. Such stain or paint must be uniform for an entire fence and maintained in good condition.

(iv) **Fencing Height.** Fencing shall not exceed five (5) feet in height; provided that a decorative cap or top (lattice work or other approved decorative detail) may be installed thereon so long as the aggregate height of the entire structure shall not exceed six (6) feet.

(v) **Use of Professional Installer.** A professional fencing contractor must be hired by the Owner, at such Owner's cost, to install approved fencing for such Owner.

(vi) **Developer Installed Fencing.** No fencing shall connect to or otherwise interfere with any fencing originally installed by the Developer. Any fencing installed by Developer shall not be subject to these standards.

(vii) **Landscape Easements.** Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon Landscape Easements.

(viii) **Fencing within Easements:** Fencing which is installed within any easement affecting a Lot shall be subject to the risk of removal without notice by the Association or any other entity or entities which have access rights, if any work or repairs are to be done within the easement area(s). The Owner of such Lot shall be responsible for any and all costs relating to the removal of such fencing and for the subsequent replacement of any approved replacement fencing.

In addition, fencing must not impede surface drainage and must be installed to be a minimum of three (3) inches off the ground (fence posts must not obstruct any drainage, i.e. rear swale)

(b) Location of Fencing on Conventional Lots: In addition to the restrictions under subsection (a), above, and those found under subsection (d), below, the following restrictions are applicable to all Lots within the Development *other than* Lots which are improved with Developer's Village Lane product (being Lots which are subject to Private Lane Easements):

(i) Fencing shall not extend forward beyond a point, which is ten (10) feet behind the front corner of the residence; and

(ii) Fencing on any corner Lot shall be at least five (5) feet from the sidewalk.

(c) Fencing location on Lots subject to Private Lane Easements(Village Lane Communities): In addition to the restrictions under subsection (a), above, and those found under subsection (d), below, the following restrictions are applicable to all Lots which are improved with Developer's Village Lane product (being Lots which are subject to Perpetual Non-Buildable Easements (P.N.E.) and Private Lane Easements):

(i) Fencing shall not extend forward beyond a point, which is ten (10) feet behind the front corner of the residence;

(ii) Fencing shall not extend backwards beyond a point towards the rear of a residence determined by a measurement which is the greater of (A) four (4) feet from the rear corner of such residence or (B) the rear corner of the adjacent residence, if any;

(iii) *Fencing shall not run parallel to an adjoining residence. Permitted Fences are to be perpendicular to the side wall of the subject residence and terminate at a point such that there exists at least three (3) feet between such point and the property line of the subject Lot;*

(iv) Fencing shall not be constructed within twenty-five (25) feet of the shoreline of any lake or detention pond; and

(v) Fencing on any corner Lot shall be at least five (5) feet from the sidewalk.

(d) Additional Fencing Restrictions. Fencing for Lots in highly visible locations (such locations to be determined by the Committee in its sole discretion) shall be subject to the following additional restrictions:

(i) **Pond Lots**: Lots which are adjacent to or which abut a Lake or detention pond are subject to the following restrictions:

(A) Fencing shall not exceed four (4) feet in height; provided that in the discretion of the Committee, the portion of such fence closest to the rear side of the residence may be the five (5) feet in height, and have a decorative cap (not to exceed six (6) feet aggregate); provided further that such higher section shall not extend more than ten (10) feet from the rear corner(s) of the residence, subject to (B), below. In exercising its discretion under this provision, the Committee shall take into account the affect such proposed fence would have on the use and enjoyment of the lake or pond areas by other Owners.

(B) Fencing shall not be constructed within twenty-five (25) feet of the shoreline of any Lake or detention pond.

(ii) **Perimeter Lots and Highly Visible Lots:** With respect to a Lot where either (A) the rear yards are highly visible from public streets (within the neighborhood or surrounding the neighborhood), or (B) the Lot abuts a Common Area, the Committee may require fencing for such Lot to be consistent in material, height, and style to that of previously approved fencing for any other Lot which is on and along such street or Common Area. Such restrictions shall be disclosed to buyers in the Common Interest and Community Information Disclosure.

*NOTE: In addition to the above restrictions and standards, the applicable municipality may have restrictions and ordinances that may affect, limit or otherwise restrict or prohibit an improvement to a Lot, including fencing. Approval of any improvement by the Committee does not guarantee that such improvement is not subject to any other governmental approval. There may be instances where a change is approved through the Committee but may not be allowed through the municipality (or vice versa). An Owner must check with the municipality and obtain any permits or approvals that may be required.*

6. Except as amended by Section 1, above, the Declaration shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to be executed as of the date written above.

BENJAMIN CROSSING LLC

By: C.P. MORGAN COMMUNITIES, L.P.,  
Member

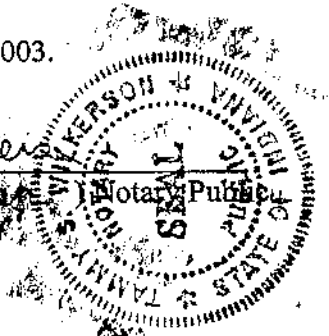
By: C.P. MORGAN INVESTMENT CO., INC.,  
General Partner

By:   
Mark W. Boyce, Vice President

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF HAMILTON    )

Before me, a Notary Public in and for said County and State, personally appeared Mark W. Boyce, the Vice President of C.P. Morgan Investment Co., Inc., the general partner of C.P. Morgan Communities, L.P., a Member of Benjamin Crossing LLC, an Indiana limited partnership, who acknowledge the execution of the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions for Benjamin Crossing for and on behalf of said entity.

Witness my hand and Notarial Seal this 18<sup>th</sup> day of December, 2003.

Tammy S. Wilkerson  
Notary Public  


My Commission Expires: 3/28/08 My County of Residence is: Marion

This Instrument prepared by Mark W. Boyce.

KEY#S 146-05310-0017  
thru 1711  
146-05309-0018  
thru 0744  
146-05306-0010  
thru 2155

04016946 06/10/2004 04:04pm  
PAMELA K BERGLUND, TIPPECANOE COUNTY RECORDER

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BENJAMIN CROSSING**

THIS SECOND AMENDMENT, dated May 26 2004, is made by BENJAMIN CROSSING, LLC, an Indiana limited liability company (the "Developer").

**Recitals:**

A. Benjamin Crossing is a single family housing development in Tippecanoe County, Indiana (the "Development"), which is subject to that certain document entitled "Declaration of Covenants, Conditions and Restrictions for Benjamin Crossing," dated February 3, 2003, and recorded on March 7, 2003, as Instrument No. 03009184, in the Office of the Recorder of Tippecanoe County, Indiana, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Benjamin Crossing, dated December 18, 2003, and recorded on December 22, 2003, as Instrument No. 03050137, in the office of the Recorder of Tippecanoe County, Indiana, (the "Declaration").

B. The Declaration provides that the Developer has the right and option to amend the Declaration, and Developer desires to amend the Declaration.

**Terms:**

NOW THEREFORE, the Developer hereby amends the Declaration as follows:

1. The following is hereby added as new Section 4.10 of the Declaration:

**Section 4.10 Compliance with Drainage Plan.** The Owner of any Lot is responsible for compliance with the provisions of the drainage plan as approved for this plat by the Tippecanoe County Drainage Board and the requirements of all drainage permits for this plat issued by said Department.

- a. The Association is responsible for the maintenance and repair of the Storm Water Drainage System and the Storm Water Detention Basin, together with its outlet and water level control structures, until such time as Tippecanoe County or some other appropriate municipal authority assumes such responsibility.

JULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER.

JUN 10 2004

*Robert A. Blumenthal*  
AUDITOR OF TIPPECANOE CO.



b. Any Owner, the Board of Commissioners of Tippecanoe County and/or the Tippecanoe County Drainage Board, or any other appropriate municipal authority shall have the right to order the Association to carry out its obligation to maintain, repair and/or replace the landscaping, Storm Water Drainage System and Storm Water Detention System Improvements, as above provided, and to assess the Owners with the cost thereof.

c. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Storm Water Drainage and Storm Water Detention Systems or abandonment of his Lot.

d. The Developer, its successors and assigns, hereby waives any and all right to object to the establishment of the Storm Water Drainage System and Storm Water Detention System of Benjamin Crossing Planned Development as a legal drain under the management and control of the Tippecanoe County Drainage Board and/or the Tippecanoe County Board of Commissioners.

2. Except as amended by this Second Amendment, the Declaration shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the undersigned has caused this Second Amendment to be executed as of the date written above.

BENJAMIN CROSSING LLC

By: C.P. MORGAN COMMUNITIES, L.P., Member

By: C.P. MORGAN INVESTMENT CO., INC.,  
its general partner

By: Michelle Cooper  
Michelle Cooper, Authorized Agent

STATE OF INDIANA     )  
                                      ) SS:  
COUNTY OF Hamilton    )

Before me, a Notary Public in and for said County and State, personally appeared Michelle Cooper, Authorized Agent of C.P. Morgan Investment Co., Inc., the general partner of C.P. Morgan Communities, L.P., an Indiana limited partnership, being a member of Benjamin Crossing LLC, an Indiana limited liability company, who, having been duly sworn, executed the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions for Benjamin Crossing for and on behalf of said entity and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 26<sup>th</sup> day of May, 2004.

*Tammy S. Wilkerson*  
Tammy S. Wilkerson



My Commission Expires:

3/29/08

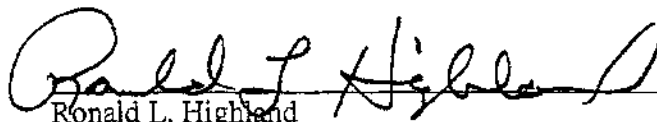
My County of Residence is:

Madison

This Instrument prepared by:  
Lewis E. Willis, Jr., Esq.  
Stark Doninger & Smith  
Suite 700  
Indianapolis, Indiana 46204

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As the Administrative Officer of unincorporated Tippecanoe County, I have determined that the changes herein are in conformance with the approved Preliminary Plan for Benjamin Crossing Planned Development as adopted by the County Commissioner's.

A handwritten signature in cursive script, reading "Ronald L. Highland", written over a horizontal line.

Ronald L. Highland  
County Building Commissioner