

Declaration Of Covenants, Conditions and Restrictions
Of

609664

Sweetbriar at Winslow Farm

Our file
COPY.

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 13th day of June, 1996, by Sweetbriar LLC, an Indiana limited liability company, hereinafter referred to as "Declarant".

WHEREAS, Declarant desires to preserve the character of Sweetbriar at Winslow Farm and protect the property values therein.

WHEREAS, Declarant is the sole owner of the fee simple title to certain real estate, located in Monroe County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter called the "Real Estate"); and

WHEREAS, Declarant intends to sell the Real Estate restricting it in accordance with a common plan designed to preserve the value and residential qualities of the Real Estate, for the benefit of its future owners;

WHEREAS, Declarant intends to restrict the uses of the Real Estate in accordance with a common plan as stated in this Declaration;

WHEREAS, Declarant plans to improve the Real Estate by constructing seventeen (17) single-family residences upon the Real Estate in Phase I and up to thirty-six (36) additional single-family residences in additional phases to be platted in the future; and

NOW, THEREFORE, Declarant declares that the Real Estate shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of the Real Estate and of each and every person or entity who now or in the future owns any portion or portions of the Real Estate.

Section 1 Definitions The following terms used in this Declaration shall have the following meanings:

Section 1.1 Sweetbriar. "Sweetbriar" means the Real Estate described in Exhibit "A", as platted.

Section 1.2 Sweetbriar Committee. "Sweetbriar Committee" means the Sweetbriar Architectural Control Committee which shall be constituted and governed as set out in Section 7 hereof.

Section 1.3 Residence. "Residence" means a detached single-family dwelling constructed upon a Lot in Sweetbriar.

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Jim Miller
RECORDER MONROE CO., IN

- Section 1.4 Building. "Building" means all structures erected within Sweetbriar including Residences, garages, outbuildings or enclosed structures of any kind.
- Section 1.5 Builder. "Builder" means the person, firm or entity (including the Developer) constructing the first Residence on each Lot.
- Section 1.6 Community Association. "Community Association" means the Winslow Farm Community Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated Association of Owners of Residences in Winslow Farm.
- Section 1.7 Drainage Easements. "Drainage Easements" means the easements labeled "D.E." on the Plat which have been created to provide paths and courses for area and local storm drainage, either over land or in adequate underground conduits to serve the needs of Sweetbriar, the lands adjoining Sweetbriar, and the public drainage system.
- Section 1.8 Developer. "Developer" means Sweetbriar LLC, an Indiana limited liability company, and any successor or assignee of its interest in all or part of Sweetbriar or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Developer for purposes of this Declaration.
- Section 1.9 Lot. "Lot" means one of the numbered lots as shown on the Plat of Sweetbriar, Phase I.
- Section 1.10 Mortgagee. "Mortgagee" means the holder, insurer or guarantor of any first mortgage on any Lot or Residence and other improvements constructed on a Lot.
- Section 1.11 Owner. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, which owns the record fee simple title to a Lot; provided, that persons or entities owning a single Lot as tenants in common, joint tenants, tenants by the entireties or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration and provided further that any person holding record fee simple title for purposes of security only shall be excluded.

Section 1.12 Plat. "Plat" means the plat prepared by Smith Neubecker & Associates, Inc., of Sweetbriar, Phase I, an addition to the City of Bloomington, Indiana as recorded in the Office of the Monroe County Recorder, Bloomington, Indiana.

Section 1.13 Sewer Easements. "Sewer Easements" mean the easements labeled "S.E." on the Plat which have been created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system for the City of Bloomington, Indiana for the purpose of installation and maintenance of sewers.

Section 1.14 Winslow Farm Declaration. "Winslow Farm Declaration" means the Declaration of Covenants, Conditions and Restrictions of Winslow Farm, and recorded as Instrument Number 215442 on September 10, 1992 in the Miscellaneous Record Book 216, pages 300-354 in the Office of the Recorder of Monroe County, Indiana, as supplemented and amended by the First Amendment to the Declaration of Covenants, Conditions and Restrictions of Winslow Farm dated June 6, 1996 and recorded on June 10, 1996 in Miscellaneous Record 239, Pages 457-463 in the Office of the Recorder of Monroe County, Indiana, and as further supplemented and amended pursuant to its terms, the terms and provisions of which constitute binding covenants running with the Real Estate and are in addition to, and not in substitution of this Declaration.

Section 1.15 Utility Easement. "Utility Easement" means the easements labeled "U.E." on the plat which have been created for the installation of electric, telephone, cable television, water, gas or other public utilities.

Section 1.16 Vehicle. "Vehicle" means motor homes, boats, trailers, campers, motorcycles, scooters, trucks, vans, tractors, tractor trailers, buses and automobiles.

Section 2 In General.

Section 2.1 Name. The development shall be known and designated as "Sweetbriar at Winslow Farm", an addition to the City of Bloomington, Indiana.

Section 2.2 Residential Development. Sweetbriar is a single-family residential development and each Residence constructed shall be used by its owners and occupants exclusively for residential purposes. No commercial building shall be erected, altered, placed or permitted

commercial building shall be erected, altered, or removed, or shall remain on any portion of Sweetbriar. No business shall be carried on or conducted on any Lot. Leasing of a Residence for residential purposes shall not be considered a business or business activity.

Section 2.3 Governmental Restrictions. All Lots are subject to the zoning ordinances and regulations of all governmental authorities, all of which are incorporated by this reference.

Section 2.4 Effect on Owners. The Owners of a Lot, by acceptance of a deed conveying the Lot, or by the execution of a contract for the purchase of the Lot by the Developer or a subsequent Owner of such Lot, shall be deemed to have accepted, read, understood, and execute such contract subject to the restrictions and agreement herein contained. From the date of deed or execution of such contract, the Owner shall have all the rights and powers of Developer and the same shall be binding with respect to these restrictions, and also on the heirs, personal representatives, successors, and assigns. The Owners, covenant and agree and consent to and with the Owners and subsequent Owners of all Lots affected by these restrictions to keep and perform such restrictions and agreements.

Section 3 Physical Characteristics of the Development.

Section 3.1 Number of Lots in Tract. Sweetbriar shall be developed in phases. Sweetbriar, Phase I will contain the number of Lots shown on attached Exhibit A. Each Lot shall conform to the boundaries thereof as depicted on the Plat.

Section 3.2 Easements. Perpetual and non-exclusive easements for Sewer Easements and Utility Easements for the installation, maintenance, repair and replacement of water, storm water, power and telephone conduits, transformers, or cable television lines shown on the Plat. Within these easements, no structure or material shall be placed or permitted to be placed which may interfere with the installation and maintenance of such lines which may change the direction or flow of drainage. No trees or vegetation are allowed in these easements.

Section 3.3 Streets. All streets as shown on the Plat within the boundaries of Sweetbriar are hereby dedicated to the public.

Section 3.4 Underground Utilities. All utilities, including but not limited to water, gas, electric, sewer and cable television shall be installed underground.

Section 4 Construction Provisions.

Section 4.1 One Residence. Only one Residence shall be constructed on any Lot.

Section 4.2 Minimum Size. The following minimum sizes shall apply to each Residence constructed on a Lot:

4.2.1 One-story residences shall have a finished ground floor area of not less than 920 square feet above finished grade.

4.2.2 Two-story residences and one and one-half story residences shall have a finished ground floor area of not less than 610 square feet above finished grade and a total finished area of not less than 1220 square feet above finished grade.

For purposes of this Section 4.2, ground floor area shall be determined from the area of the Residence measured from the outside of the building foundation exclusive of open porches, breezeways, garages, carports, chimney and eaves.

The provisions of this Section 4.2 may be waived by the Sweetbriar Committee upon application in writing by any Lot Owner. No waiver will be valid until it is properly signed by a representative of the Sweetbriar Committee and placed of record in the Office of the Recorder of Monroe County, Indiana.

Section 4.3 Maximum Height. No Residence, exclusive of chimney, shall exceed forty (40) feet in height measured from the lowest finished grade level at the front of the foundation visible from any street to the highest point of the roof.

Section 4.4 Construction of Sewage Lines. All sanitary sewage lines within the Lots shall be designed and constructed in accordance with the provisions and requirements of the City of Bloomington, Indiana.

Section 4.5 Garages and Driveways. For every Residence located on any Lot within Sweetbriar, Phase I, there will be constructed an enclosed garage for the off-street parking of at least two (2) Vehicles;

provided: (1) the Developer can build Residences with enclosed garages for one (1) Vehicle; and, (2) any other Builder can construct a Residence with an enclosed garage for one (1) Vehicle if the Sweetbriar Committee, in its sole discretion, approves such construction in advance. Every Residence shall have a driveway with a minimum width of sixteen (16) feet extending from the edge of the street in the front of the Lot to a point at least as far as the closest point of the Residence or garage to the street; provided, the Developer, in its sole discretion, may construct driveways that taper to less than sixteen (16) feet in width for Residences located on cul-de-sacs in Sweetbriar. Any party other than Developer may only construct a driveway in Sweetbriar of less than sixteen (16) feet in width with the prior consent of the Sweetbriar Committee. All driveways shall be paved with either concrete or hot mixed bituminous asphalt material.

Section 4.6 Setback. No Residence, Building or other permanent structure shall be located on any Lot nearer to the boundaries of the Lot than the minimum setback lines as shown on the Plat or the setback restrictions approved by the Plat Committee of the City of Bloomington, Indiana, when the Plat was approved, whichever is more restrictive. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of a Residence; provided, however, that this provision shall not be construed to permit any portion of a Residence on a Lot to encroach upon any other Lot in Sweetbriar or any adjoining development.

Section 4.7 Prohibited Building Styles. No bi-level Residences will be constructed on any Lot within Sweetbriar. Modular construction or modular homes will not be permitted upon any Lot in Sweetbriar. No used structure will be relocated or placed on any Lot.

Section 4.8 Solar Devices. No artificial or manmade device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed, or maintained upon any portion of Sweetbriar including any Residence except for solar systems that were incorporated into the original design of the Residence and which are flush with the roofline. This Section 4.8 shall not prohibit the use of "passive solar or geothermal" energy.

Section 4.9 Garbage Disposals and Sanitary Sewers. All Residences shall be equipped with a mechanical device for the grinding and disposal of garbage and food waste in the kitchen(s) which shall discharge

to the sewer drain. All sewage disposal shall be connected with the sanitary sewer system of the City of Bloomington, Indiana. No septic tanks, holding tanks or cesspools shall be constructed or permitted to remain upon any Lot within Sweetbriar.

Section 4.10 Lot Access. All Lots shall be accessed from the interior streets of Sweetbriar. No direct access to Lots shall be permitted from Winslow Farm Road or Henderson Street.

Section 4.11 Light Fixtures, Mailboxes, Etc. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within Sweetbriar, any light fixture, basketball goal or similar structure must be approved by Sweetbriar Committee as to size, location, height and composition before it may be installed. Mailboxes shall be constructed in accordance with plans supplied by the Sweetbriar Committee and no Owner will change the style or color of his mailbox without the prior written approval of the Sweetbriar Committee, unless such change is required by the U.S. Postal Service in order to obtain mail delivery. Temporary basketball goals are permitted in Sweetbriar only if they are removed from sight daily and stored inside the Owner's garage or Residence overnight. No temporary basketball goal shall be allowed to remain on the exterior of the Residence in view of other Owners when not in use. No basketball goals, temporary or permanent, shall be erected in Sweetbriar when it would materially damage vegetation or landscaping materials.

Section 4.12 Exterior Construction. The following requirements shall be applicable unless the Sweetbriar Committee shall approve otherwise: (a) all utility facilities in Sweetbriar will be underground; (b) whenever possible, all utility meters and HVAC units in Sweetbriar will be located in places unseen or screened from the front of the Residences; (c) no outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted above or below ground in Sweetbriar; (d) all windows in Sweetbriar will be factory or on the job painted; no raw aluminum windows will be permitted; (e) all gutters and downspouts in Sweetbriar will be factory or on the job painted; (f) all roof pitches of the Residences will be four to twelve (4:12) or greater; (g) no metal, fiberglass or similar type material awnings or patio covers will be permitted in Sweetbriar; (h) no above-ground swimming pools will be permitted on any Lot in Sweetbriar; (i) the original exterior color of a Residence in Sweetbriar shall not be changed without the express prior written

approval of the Sweetbriar Committee; (j) any repairs or replacements to the exterior of the Residence shall be made with comparable materials of the same texture, color and style unless the Owner first obtains the written approval of the Sweetbriar Committee whose decision shall be conclusive and binding on all parties.

Section 4.13 Submission of Documents. No Residence, Building or other permanent structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by The Sweetbriar Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Approval or disapproval as required in these covenants by Sweetbriar Committee shall be in writing. In the event the Sweetbriar Committee fails to approve or disapprove any plans and specifications within thirty (30) days after such plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 5 Restrictions on the Use of the Real Estate. In order to preserve the character of Sweetbriar and to protect the property values therein, and without intending to limit the generality of the foregoing provisions, the following protective covenants and restrictions are imposed as a common scheme upon Sweetbriar and shall be applicable to each Lot and to each Residence constructed in Sweetbriar, Phase I:

Section 5.1 Maintenance of Lots and Improvements. The Owner of any Lot in Sweetbriar shall at all times maintain the Lot and his Residence, Building or other structure situated thereon in such a manner as to prevent the Lot, the Residence, Building or other structure from becoming unsightly and, specifically, such Owner shall:

5.1.1 Mow the Lot and any adjoining tree plot or adjoining portions of the public right-of-way at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds; fertilize the grass and other landscaping materials as necessary to foster growth; water all grass and landscaping materials to prevent them from becoming unsightly; remove all weeds from the Lot and adjoining tree plot and public right of

ways; and exercise good husbandry with respect to all landscaping located thereon.

- 5.1.2 Remove all debris or rubbish from the Owner's Lot or any adjoining areas owned by the public.
- 5.1.3 Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of Sweetbriar.
- 5.1.4 Cut down and remove dead trees or portions of trees.
- 5.1.5 Keep the exterior of the Residence, Buildings and other structures in such a state of repair or maintenance as to avoid their becoming unsightly.
- 5.1.6 Maintain the landscaping and tree plot, if any, between the Owner's Lot and the curb of any public street adjacent to the Owner's Lot.

Section 5.2 Additional Use Restrictions.

- 5.2.1 No Owner shall install or maintain any satellite dish upon the Owner's Lot, Residence or any portion of Sweetbriar. Notwithstanding the foregoing, the Owner, after obtaining the prior written consent of the Sweetbriar Committee, may install a ground mounted transponder not more than eighteen inches (18") in diameter which is designed to receive signals from the digital broadcast system (DBS). No installation shall be made in any easements, public right-of-ways or tree plots. The Sweetbriar Committee, prior to installation of any such DBS system, must approve the location and all landscaping proposed by Owner to screen the transponder from view. The Sweetbriar Committee shall have the right to approve any request with specific conditions as to location, mounting or landscaping or to deny any request as the Sweetbriar Committee deems to be in the best interests of the Owners. Any decision by the Sweetbriar Committee shall be final, unappealable and conclusive.
- 5.2.2 No Vehicles shall be parked on the public streets in Sweetbriar overnight.
- 5.2.3 No: (a) commercial Vehicles of any kind; (b) horse trailers (motorized or non-motorized); (c) recreational Vehicles; (d) boats and jet-skis; (e) trailers; (f) campers; (g) farm equipment; (h)

disabled or abandoned Vehicles; (i) house trailers; (j) off-road Vehicles (including snowmobiles, dirt bikes and unlicensed Vehicles designed primarily for off-road use); or, (k) Vehicles of any kind which exceed nineteen feet (19') in length shall be parked or allowed to remain in Sweetbriar (including but not limited to any public street, Lot, driveway, sidewalk, public right-of-way); provided, the above-listed items may be kept in the Residence's enclosed garage with the garage door closed if the above-listed item can be stored in the garage out of view to any member of the public or any other Owner of a Lot in Sweetbriar.

- 5.2.4 No exterior clotheslines of any kind will be permitted on any Lot in Sweetbriar.
- 5.2.5 No exterior dog houses or pet houses of any kind shall be erected or maintained on any Lot in Sweetbriar and no tethers or stakes shall be used to contain pets out of doors. No persons shall tie a chain, rope or tether to a tree in Sweetbriar to attempt to contain a pet.
- 5.2.6 No flags, banners, signs, or other displays shall be regularly or permanently displayed in Sweetbriar; however, the display of flags, banners or other displays for a period not to exceed forty-eight (48) hours shall be permitted.
- 5.2.7 No illuminated decorations of any kind shall be displayed in Sweetbriar on any Residence, Lot or public right-of-way except from Thanksgiving Day until immediately following January 8th. Holiday decorations shall be limited in size and number so as not to create traffic hazards within Sweetbriar.

Reference is hereby made to the terms and provisions of Winslow Farm Declaration which requires the Community Association to maintain signage within Winslow Farm. Each Owner of any Lot upon which any such signs are located grants a perpetual appurtenant easement to the Community Association to repair, replace and maintain any entrance signage located on any Lot in Sweetbriar.

Section 5.3 Subdivision of a Lot. There shall be no subdivision of any Lot within Sweetbriar, Phase I nor any sale thereof in parcels except that a portion of a Lot may be sold to an adjoining Lot Owner if no new Lot is created and if the transferor obtains the prior written approval of the Sweetbriar Committee. The setback requirements set out in Section 4.6 cannot be waived.

Section 5.4 Winslow Farm Declaration. Each Owner of a Lot in Sweetbriar is expressly subject to the additional restrictions applicable to all Owners in Winslow Farm contained in the Winslow Farm Declaration which is incorporated herein by this reference.

Section 6 Enforcement. The provisions of Sections 4 and 5 hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of Sweetbriar. If any Owner fails to fully observe and perform the obligations set forth in this Declaration, and in the further event that such failure is not cured within ten (10) days after written notice of the same is given by Sweetbriar Committee, any Owner of any Lot within Sweetbriar shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person, the Sweetbriar Committee shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Sweetbriar Committee. The failure or forbearance by the Sweetbriar Committee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the covenants or restrictions contained in this Declaration cannot be adequately remedied by an action at law and that injunctive relief is appropriate. All costs incurred by the Sweetbriar Committee in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure, including attorney's fees shall be payable by the defaulting Owner upon demand by Sweetbriar Committee, and shall immediately become a lien against his Lot. The rights in the Owners and Sweetbriar Committee under this section shall be in addition to all other enforcement rights hereunder or at law or in equity.

Section 7 The Sweetbriar Committee.

Section 7.1 Powers of The Sweetbriar Committee.

7.1.1 In General. In order to preserve the natural quality and aesthetic appearance of the existing geographic area, no Residence, Building or improvement of any type or kind shall be repainted, constructed or placed on any Lot in Sweetbriar and no existing trees shall be removed, without the prior written approval of the Sweetbriar Committee. Such approval shall be obtained only after written

application has been made to the Sweetbriar Committee by the Owner of the Lot requesting authorization from the Sweetbriar Committee. Such written application shall be in the manner and form prescribed from time to time by the Sweetbriar Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Sweetbriar Committee may require. All plans and drawings required to be submitted to the Sweetbriar Committee shall be drawn to a scale of one inch (1") equals ten feet (10'), or to such other scale as the Sweetbriar Committee may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for Improvement Location Permit shall bear the stamp or signature of the Sweetbriar Committee acknowledging the approval thereof.

7.1.2 Power of Disapproval. The Sweetbriar Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement when:

(a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration or the Winslow Farm Declaration.

(b) the design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent Residences or structures; or

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

7.1.3 Developer Improvements. The Sweetbriar Committee shall have no powers with respect to any improvements or structures erected or constructed by the Developer (or any Builder if Developer has approved the plans therefor).

- Section 7.2 Duties of the Sweetbriar Committee. The Sweetbriar Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Sweetbriar Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.
- Section 7.3 Liability of the Sweetbriar Committee. Neither the Sweetbriar Committee nor any agent thereof, nor Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.
- Section 7.4 Inspection. The Sweetbriar Committee may inspect work being performed with its permission to assure compliance with this Declaration and applicable regulations.
- Section 7.5 Membership. The Sweetbriar Committee shall consist of members designated by the Developer until the passage of control by Developer to Owners by virtue of a written document in recordable form. After Developer has passed control to the Owners, the Sweetbriar Committee shall consist of three (3) Owners selected from time to time through the written approval of at least 66-2/3 percent of all Owners in Sweetbriar, including any additional phases in Sweetbriar, if any, made subject to this or any similar Declaration. Membership on the Sweetbriar Committee may be changed and vacancies shall be filled from time to time upon the written approval of at least 66-2/3 percent of all the Owners in Sweetbriar; provided, however, that in the event of a vacancy on the Sweetbriar Committee, the remaining (2) members of the Sweetbriar Committee members may appoint an Owner to the Sweetbriar Committee to serve until the requisite percentage of Owners, as aforesaid, shall otherwise appoint an Owner to fill such vacancy.
- Section 7.6 Approvals. Approvals, determinations, permissions or consent required herein shall be deemed given if they are given in writing signed with respect to the Sweetbriar Committee by two members thereof (except during such time that the Developer controls the Sweetbriar Committee, in which event the written approval of an authorized officer or agent of Developer shall suffice).