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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BAINBRIDGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAINBRIDGE (hereinafter referred to as "Declaration") is made this 12th day of June, 2004, by BMR Properties, LLC, an Indiana limited liability company (hereinafter referred to as "Developer").

RECITALS:

WHEREAS, Developer is the owner of certain real property located in Hamilton County, Indiana, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"), and Developer desires to subject the Property to the provisions of this Declaration and to have constructed on the Property a residential community to be known as "Bainbridge" (hereinafter the "Community"), and to provide a flexible and reasonable method for the administration and maintenance of such Property; and

WHEREAS, as hereinafter provided in this Declaration, Developer has retained and reserved the right, privilege and option to submit to the provisions of this Declaration, at a later time and from time to time, as a part of the residential community described herein, additional property and has retained and reserved the right to withdraw and remove any portion of the Property from the control and provisions of this Declaration; and

WHEREAS, in contemplation of the sale and conveyance of the residential lots situated within the platted areas of the Community, Developer desires to subject and impose upon all the platted areas within the Community mutual and beneficial restrictions, covenants, conditions and charges under a general plan or scheme of improvement for the benefit of the lots and lands within the Community and the future owners thereof; and

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Community and subject to this Declaration, are held and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the easements, restrictions, covenants, charges, liens, and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the Property in the Community and which shall touch and concern and run with the title to the Property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof and every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Declaration.

**ARTICLE I
DEFINITIONS**

The following words, when used in this Declaration, unless the context shall prohibit or otherwise require, shall have all the following meanings. All definitions shall be applicable to the singular and plural forms of such terms:

Section 1.1 *"Additional Property"* shall mean and refer to the additional real property, if any, subjected to this Declaration by a Supplemental Declaration or Plat reference, and all improvements thereon, as set forth by Developer by amendment hereto or Plat recorded in the records of the Recorder of Hamilton County, Indiana. Any Additional Property shall be limited to those areas described in Section 2.2.

Section 1.2 *"Annexation"* shall mean and refer to the act of recording in the public records of Hamilton County, Indiana, a Supplemental Declaration or Plat which makes all or a portion of any Additional Property subject to the terms of this Declaration, as more particularly described in Article II hereof.

Section 1.3 *"Architectural Standards Committee" or "ASC"* shall mean and refer to the committee which shall be appointed by the Association's Board of Directors to approve exterior and structural improvements, additions, and changes within the Community as provided in Article IX hereof.

Section 1.4 *"Area of Common Responsibility"* shall mean and refer to the Common Areas, together with those areas and properties, if any, which by the terms of this Declaration, or by contract or by agreement become the responsibility of the Association. Such areas may include, but are not limited to, the office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way within or adjacent to the Property.

Section 1.5 *"Articles of Incorporation" or "Articles"* shall mean and refer to the Articles of Bainbridge Homeowners Association, Inc., as filed with the Secretary of State of the State of Indiana.

Section 1.6 *"Association"* shall mean and refer to Bainbridge Homeowners Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated.

Section 1.7 *"Base Assessment"* shall mean and refer to assessments levied by the Association against each Lot in the Property to fund Common Expenses in the manner herein provided.

Section 1.8 *"Board of Directors" or "Board"* shall mean and refer to the board of directors of the Association.

Section 1.9 *"By-Laws"* shall mean and refer to the By-Laws of Bainbridge Homeowners Association, Inc. as amended from time to time.

Section 1.10 *"Builder"* shall mean and refer to any Person acting as a contractor, construction manager, sub-contractor, trade contractor or materials supplier engaged in the construction and/or development of Dwellings on Lots in the Community.

Section 1.11 *"Class B Control Period"* shall mean and refer to the period of time during which the Class B Member is entitled to appoint the members of the Board of Directors as provided in Section 4.2(b) hereof.

Section 1.12 *"Common Areas"* shall mean and refer to those portions of the Property which are to be owned and maintained by the Association and shall include, but not limited to, all blocks and Open Common Areas (as herein defined) as designated on the recorded Plat(s) for Bainbridge.

Section 1.13 *"Common Expenses"* shall mean the actual and estimated expenses incurred for maintenance of Common Areas by the Association for the general benefit of the Community, including any reasonable reserve, 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. Common Expenses shall also include any other expenses denominated as such by this Declaration and shall include the costs of maintaining any intangible or tangible property (such as sewer lines, lighting and landscaping) which may not be located in a Common Area but the maintenance of which is in the best interest of the Community as determined by the Developer or the Board in its sole and absolute discretion.

Section 1.14 "Common Properties" shall mean those areas defined as Common Areas and set aside for conveyance to the Association as shown on any Plat, together with any other tangible or intangible personal property transferred to the Association by Developer (or hereafter acquired by the Association). All Common Properties owned by the Association shall remain private, and neither Developer's execution or recording of a Plat nor the doing of any other act by Developer is, or is intended to be, a dedication to the public of such Common Properties.

Ownership of any Common Properties shall be conveyed in fee simple title, free of financial encumbrances, to the Association as soon as practicable after the completion of any improvements thereto as contemplated on any Plat for the Community. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as Developer may, at the time of such conveyance, deem appropriate. Such conveyance shall be deemed to have been accepted by the Association upon the recording of a deed conveying such areas to the Association.

Section 1.15 "Community" shall have the meaning specified in the Recitals to this Declaration.

Section 1.16 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard may be more specifically determined by the Board, by the New Construction Committee (as defined in Section 9.2) or by the Architectural Standards Committee.

Section 1.17 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Bainbridge and all supplements and/or amendments hereof filed for record in the public records of Hamilton County, Indiana.

Section 1.18 "Developer" shall mean and refer to BMR Properties, LLC, an Indiana limited liability company, and any successors or assigns who (i) takes title to any portion of the Property for the purpose of development and sale, and (ii) is designated as the Developer hereunder in a recorded instrument executed by the immediately preceding Developer.

Section 1.19 "Dwelling" shall mean and refer to any residential dwelling unit designed or intended for use as a residential dwelling on a Lot located within the Community.

Section 1.20 "Foreclosure" shall mean and refer to, without limitation, the judicial reclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

Section 1.21 "Landscape Easement" shall mean and refer to those areas identified as such on any recorded Plat of the Property. Landscape Easements shall be more specifically described in Section 3.6 below. Landscape Easements shall also include any other type of landscape easement areas created by Developer on the recorded Plat for any portion of the Property, including, but not limited to, areas for common signage and fencing.

Section 1.22 "Lot" shall mean and refer to each plot of land included in the Property and identified as a lot on any recorded Plat of the Property upon which it is intended that a Dwelling shall be constructed.

Section 1.23 "Member" shall mean and refer to a Person holding membership in the Association as provided in Article IV below.

Section 1.24 "Mortgage" shall mean and refer to any mortgage or other security instrument by which a Lot or any structure thereon is encumbered.

Section 1.25 "*Mortgagee*" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 1.26 "*Owner*" shall mean and refer to the record owner, whether one or more Persons, with fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" shall include Developer so long as Developer shall own any Lot. If a Lot is sold under a contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner.

Section 1.27 "*Person*" means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

Section 1.28 "*Plat*" shall mean any subdivision or similar plat executed by Developer (or any other owner of such property) recorded in the public records of Hamilton County, Indiana, pursuant to which the Property and additional Property, if any, are subjected to this Declaration as a part of the Bainbridge Community.

Section 1.29 "*Pond*" shall refer to the retention pond (Common Area B) identified on the Plat and more specifically described in Article III, Section 3.9 of this Declaration.

Section 1.30 "*Property*" shall have the meaning specified in the Recitals to this Declaration, including the real estate described on Exhibit A, together with all improvements thereon, and upon submission to the provisions of this Declaration, the tracts or parcels of real estate described as Additional Property, if any, together with all improvements thereon.

Section 1.31 "*Special Assessment*" shall mean and refer to assessments levied in accordance with Article VIII, Section 8.4 of this Declaration.

Section 1.32 "*Supplemental Declaration*" shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Developer, or by the Association pursuant to Section 2.2, and recorded in the public records of Hamilton County, Indiana, which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. A Supplemental Declaration may also remove Property from the control and provisions of this Declaration.

Section 1.33 "*Total Vote*" shall mean the combination of the total number of votes of the Class A Voting Members and the total number of votes of the Class B Member as further described in Article IV.

Section 1.34 "*Tree Preservation Areas*" shall refer to those areas identified on the Plat and more specifically described in Article III, Section 3.7 of this Declaration.

ARTICLE II

DEVELOPMENT

Section 2.1 Development of Property. Except as otherwise set forth in Section 10.25, all Lots within the Community shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation [for so long as Developer owns any Lot or retains the right to submit Additional Property (as set forth in Section 2.2) to the provisions of this Declaration] to maintain and make improvements, repairs, and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, (iv) installation of security and/or refuse facilities, and (v) additions or changes in the boundaries of any Common Areas or Landscape Easement

areas.

Section 2.2 Development of Additional Property. Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit (at any time, and from time to time, Until it no longer owns any portion of the real estate described on Exhibit A or until December 31, 2009, whichever is earlier), Additional Property to the provisions of this Declaration. This right may be exercised by Developer in accordance with the following rights, conditions, and limitations:

(a) Developer reserves the right to terminate this right and option at any time by executing and filing an instrument evidencing such termination in the public records of Hamilton County, Indiana.

(b) Portions of Additional Property may be added to the Community at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Community. No single exercise of Developer's option to submit a portion of Additional Property to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other portions or the balance of any Additional Property.

(c) The option may be exercised by Developer by the execution of a Supplemental Declaration or Plat describing such Additional Property which shall be filed in the public records of Hamilton County, Indiana, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Community by such amendment. The provisions of this Declaration shall then be construed as embracing the Property and the Additional Property so submitted to the terms hereof, together with all improvements located thereon. (If Additional Property is added to the Development, then the number of Members in the Association shall be increased by the number of additional Lots to be located on the Additional Property such that there is one Member for each Lot.)

Section 2.3 Withdrawal of Property. Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, until it no longer owns any portion of the Property to withdraw and remove any portion of the Property owned by Developer from the control and provisions of this Declaration. Such removal by Developer shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of Hamilton County, Indiana, together with a legal description of the Property being withdrawn.

Section 2.4 Subdivision Plat. Developer reserves the right, in its sole discretion, to record from time to time a Plat of the subdivided parcels of the Property setting forth such information as Developer may deem necessary with regard to the Community, including, without limitation, the locations and dimensions of the Lots, Common Areas, Common Properties, Additional Property, Tree Preservation Areas, roads, utility systems, drainage systems, Landscape Easements, utility easements, drainage easements, access easements, set-back line restrictions and various other restrictions and limitations.

Section 2.5 Annexation by Association. After the termination of the Class B Control Period, and subject to the consent of the owner thereof (if not the Association), the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Total Vote as cast by the Members as provided in the By-Laws, and the approval of the Developer so long as Developer owns property subject to this Declaration or which may become subject hereto in accordance with Section 2.2 of this Article.

Annexation by the Association shall be accomplished by filing of record in the public records of Hamilton County, Indiana, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association (and by Developer if Developer's consent is required herein), and by the owner of the property being annexed and any such Annexation shall be effective upon filing unless otherwise provided therein. The relevant provision of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose

of considering Annexation of property pursuant to this Section 2.5 and to ascertain the presence of a quorum at such meeting.

Section 2.6 Consent of Developer. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Developer for so long as Developer owns any portion of the Property or retains an option to submit Additional Property to the Community.

ARTICLE III PROPERTY RIGHTS

Section 3.1 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot, and upon such transfer, such former owner shall simultaneously transfer and endorse to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided by Owners and the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the approval of the Board and of Developer so long as Developer owns any Lot or holds the unexpired option to submit Additional Property or any portion thereof to the Community. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a Dwelling site larger than one Lot. In this case, the Owner of the property on which the Dwelling is located shall be required to pay one assessment for Association dues and shall only be entitled to one vote as a Member of the Association.

Section 3.2 Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

- (a) The right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas.
- (b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Property, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.
- (c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to the Town of Westfield or Hamilton County, Indiana, or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of the Total Vote cast by the Members as provided in the By-Laws, and by Developer (for so long as Developer owns any Lot or holds the unexpired option to submit Additional Property to the Community).
- (d) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Property.

- (e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3 Easements for Developer. During the period that Developer owns any Lot or holds the unexpired option to submit Additional Property to the Community, Developer shall have an easement for access to Common Areas for the purpose of constructing structures and other improvements in and to the Lots and Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot or has the right to submit Additional Property to the Community, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners in the Community.

Section 3.4 Utility and Public Service Easements.

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept easements to and from the Town of Westfield and Hamilton County, Indiana, or any other public authority or agency, public service district, public or private utility or other person, upon, over, under, and across (i) all of the Common Areas; and (ii) those portions of all Lots as are reasonably necessary for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Community or any portion thereof, and electrical, gas, telephone, water, and sewer lines, provided that such easements shall not unreasonably affect the use, development, marketability, or value of any such Lot. To the extent possible, all utility lines and facilities serving the Community and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Community so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or finish grading, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

(b) Developer hereby grants to the Town of Westfield and Hamilton County, Indiana, or such other governmental authority or agency as shall from time to time have jurisdiction over the Community' with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Community as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements in those areas designated on the Plat which easements shall run in favor of Developer, the Town of Westfield, and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system. No permanent structures shall be erected or maintained upon said sewer easements.

Section 3.5 Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage

system, either by surface drainage or appropriate underground installations, for the Property; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the Board; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.6 Landscape Easements. Landscape Easements, as designated on a Plat of all or any part of the Property, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of walls, fencing, earth mounds, trees, foliage, landscaping, and other improvements. 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 said Landscape Easements without the written consent of the Board.

The landscaping and other improvements planted or installed by the Developer and/or the Association within the Landscape Easement areas may not be removed by an Owner, nor may the Owner add any landscaping or improvements in such areas without the approval of the Board.

Section 3.7 Tree Preservation Areas. As identified on the final Plat recorded with the Recorder of Hamilton County, Indiana, there are strips of wooded ground noted on various lots marked as Tree Preservation Areas. In developing the Community, the Developer will endeavor to leave the trees and vegetation within the Tree Preservation Area in a natural state. In so doing, the Developer shall attempt to preserve all trees larger than four inches (4") in diameter [measured six inches (6") above ground], except in those areas necessary for the installation of utilities or drainage. No permanent or other structures shall be erected or maintained in any Tree Preservation Areas, including but not limited to, fences, patios, decks, driveways or walkways, unless such improvements are specifically approved by the Developer, the Board of Directors and the Architectural Standards Committee and are in accordance with the Town of Westfield zoning standards.

Except as noted immediately below, each Builder and/or Developer shall endeavor to conserve trees within the Tree Preservation Area, and Owners of Lots shall not remove trees within the Tree Conservation Areas except as necessary for:

- (a) The clearing of underbrush and dead trees within the Tree Preservation Areas shall be allowed;
- (b) The removal of trees necessary for the installation of utilities and drainage improvements and infrastructure shall be allowed; and
- (c) Trees may be removed as necessary for public health and safety, provided, however, that all necessary approvals described in this Section 3.7 are obtained.

Except as set forth in subparagraphs (a), (b), and (c) immediately above, each tree within the Tree Preservation Areas identified on the Plat which is badly damaged or destroyed by a Builder or by a Lot Owner during the course of construction activities and which is greater than four inches (4") in diameter, measured six inches (6") above ground, shall be replaced within one (1) year, with a similar type tree which is at least two and one-half inches (2-1/2") in diameter measured six inches (6") above ground. Any trees which are replaced pursuant to the terms and conditions of this paragraph and which die within one year of their planting shall promptly be replaced "with a substantially" similar tree. The Person responsible for replacing any such tree hereunder, either initially or, if necessary, within the one year period after planting, will be the Owner of the Lot upon which the tree was originally located or, if the tree was damaged or destroyed by a Builder or another Lot Owner in the course of construction of a Dwelling on another Lot in the Community, the Owner of the Lot upon which such Dwelling was being constructed will be responsible for replacing any such tree within the Tree Preservation Area. The provisions of this section imposing responsibility upon a Lot Owner for the replacement of any such tree are for the benefit of the Association and the Community and shall not be deemed or construed as limiting, in any way, the liability of any Builder to any such Owner and/or the Association for any damage to

any trees in the Tree Preservation Area.

Trees within any such Tree Preservation Areas shall be permanently maintained by the Owner of the applicable portion of the real estate and their successors in title. Trees or vegetation within any such Tree Preservation Area may not be removed or altered without the approval of the Developer, the Board of Directors and the Architectural Standards Committee. Prior to and during any period in which construction activity is underway on any Lot, the applicable Builders and Lot Owners shall be required to place orange construction fencing along the affected portions of any Tree Preservation Areas on the Lot. Periodic maintenance, seasonal plantings and the like shall not be subject to the restrictions in this Section.

Section 3.8 Buildable Lot - Tree Conservation. Each Lot Owner and his respective Builder shall endeavor to preserve trees during the placement of any proposed Dwelling and driveway on the Lot. The Town of Westfield and the Developer shall have the right but not the obligation, to require and review the proposed tree clearing plans for home construction prior to the commencement of any tree clearing or construction activities.

Section 3.9 Pond. The Developer shall convey title to the area upon which the retention Pond is located to the Association. The Association shall be responsible for maintaining the Pond. The Maintenance Costs of the Pond shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Pond shall be responsible at all times for maintaining so much of the bank of the Pond above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of the Pond abutting his Lot free of debris and otherwise in reasonable clean condition. No boats shall be permitted upon any part of a Pond and no dock, pier, wall or other structure may be extended into a Pond without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in any Pond. Developer shall have no liability to any Person with respect to a Pond, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Pond or the proximity of a Lot thereto, including loss or damage from erosion.

Section 3.10 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved and created for the use of Developer, and its successors and assigns, and persons constructing any Dwelling or improvement, a right and easement for access to the Property for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Developer may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots, Common Areas, or the Additional Property for so long as Developer owns any Lot or holds the unexpired option to add Additional Property to the Community.

Section 3.11 Maintenance Easement. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a Community-Wide Standard of health, fire safety, and appearance within the Community, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions or interfere with the use of any Lot development.

Section 3.12 Sanitary Sewer Provisions. The following rules and restrictions shall apply with respect to the maintenance of the sanitary sewer system in the Community:

- (a) No pavement or concrete, including driveways and sidewalks, shall be constructed on or within one foot horizontal distance of any sanitary sewer manhole or clean-out casting.
- (b) All Owners of Dwellings not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.
- (c) The discharge of clean water sources (e.g. foundation drains, sump pumps, roof drains) to the sanitary sewers is prohibited.

(d) Any grade changes of a material nature across sanitary sewer facilities must be approved in writing by the Town of Westfield-Public Works.

(e) The drip line of all trees must be located a minimum of ten (10) feet away from the center of sanitary sewers and manholes and no trees shall be planted directly over sewer laterals. No landscaping, mounding, lighting, fencing, signage, walls, or irrigation lines shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure.

(f) The Owner of each Dwelling will be responsible for the operation, maintenance and replacement of the lateral serving the Dwelling from the Dwelling to its connection into the gravity main.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 4.1 Membership. Every Owner, as defined in Article I, shall be deemed to be a Member and have a membership in the Association.

Except as provided herein with respect to the Class B Member, no Owner, whether one (1) or more Persons, shall have more than one (1) membership interest per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The right and privilege to vote on matters pertaining to the Association, upon which the Members have a right to vote hereunder (herein referred to as "Voting Matter(s)"), shall be limited to One (1) vote per Lot. If a Lot is owned by one Person, that Person will be a Member and will be entitled to exercise the right to vote on all Voting Matters. If a Lot is owned by more than one (1) Person, each such Person shall be considered to be a Member for purposes of this Declaration, provided, however, that all such Members, constituting joint Owners of any such Lot, will only have the right to cast, in the aggregate, one (1) vote for each Lot so owned, on any and all Voting Matters. To the extent that any such Members, constituting joint Owners of any such Lot, endeavor to cast more than one (1) vote on any Voting Matter, all votes from all such Members pertain to that Lot shall be void and of no force or effect, other than for purposes of establishing the presence of a quorum with respect to any such Voting Matter. If a Member is a corporation, partnership, trust or limited liability company or other entity, the rights to vote as a Member hereunder shall be exercised by the individual designated from time to time by that entity in a written instrument provided to the secretary of the Association, subject to the provision of this Declaration and the Bylaws.

Section 4.2 Voting. The Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) **Class A**. Class A membership shall be all Owners with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership under Section 4.1 hereof. There shall be only one (1) vote per Lot. In the event a Person or Persons own two (2) adjacent lots which have been consolidated in the manner contemplated in Section 3.1, such an Owner shall have only one (1) vote covering both such Lots, on a combined basis.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves. In such a case, those Persons shall advise the secretary of the Association, in writing, prior to any meeting of the Association, as to the identity of the individual who will exercise the rights to vote on any Voting Matters before the Association. Regardless of whether any such written advice is given to the Association, if more than one (1) vote is cast by multiple Members for anyone (1) specified Lot, all votes cast for that specified Lot will be void and of no force or effect, other than for purposes of establishing the presence of a quorum with respect to any such Voting Matter.

(b) **Class B**. The Class B Member shall be the Developer and any successor or assignee designated

as Developer. The rights of the Class B Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified in the Declaration and the By-Laws. There shall only be one (1) Class B Member at any given time under this Declaration. The Class B Member shall be entitled to three (3) votes for each Lot it owns or, in the case of unplatted land, three (3) votes per the maximum number of Lots allowed for such a parcel of land by the applicable zoning ordinance, on all Voting Matters. The Class B Member shall be entitled to appoint the members of the Board during the Class B Control Period as hereinafter defined. The Class B Control Period shall begin as of the date of this Declaration and extend to the earlier of: (i) the date on which seventy-five percent (75%) of the Lots have been sold or conveyed to Persons other than Developer or Builders holding title solely for purposes of development or sale in making such calculation, the numerator shall be the total number of Lots sold and the denominator shall be the total number of Lots anticipated for eventual sale and ownership in the Community as determined by Developer in its sole discretion); (ii) December 31, 2009; or (iii) the date on which Developer determines that the Class B Control Period shall end and notice of such termination is filed by means of an instrument recorded with the Recorder of Hamilton County, Indiana. The Class B Membership shall terminate and become converted to Class A Membership upon the termination of the Class B Control Period whereupon Developer shall be entitled to one (1) vote for each Lot it owns with the number of Lots calculated in the same manner as for the Class B memberships as set forth above.

ARTICLE V MAINTENANCE

Section 5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Areas, such maintenance to be funded as hereinafter provided. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all landscaping and other flora, structures and improvements, including all private streets situated upon the Common Areas, landscaping easements along the primary roads through the Community, medians and rights of ways of public streets within the Property, entry features for the Community, and such portions of any other real property included within the Common Areas as may be dictated by this Declaration, or by a contract or agreement for maintenance with any other person or entity, by the Association.

In furtherance of the maintenance of the streets within the Community the Association may provide for a specific type and design of street signs, posts and traffic control signs for the purpose of maintaining a unique and uniform appearance within the Community. To the extent such signs and posts are utilized by the Association, it shall be the responsibility of the Association to maintain, keep in good repair and replace such decorative signs (although such responsibility shall not relieve any governmental authority from the obligation to install temporary standard signs in the event a decorative sign is lost or destroyed). The cost to acquire such decorative signs and posts shall be a Common Expense.

Except as otherwise specifically provided herein, all costs associated with enforcement of this Declaration (including legal fees) and maintenance, repair and replacement of the Common Properties shall be a Common Expense to be allocated among all Lots as part of the Base Assessment.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public or property located outside the Community, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

In the event that Developer or Board determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Developer or the Association, except in the event of an emergency situation, may give such Owner written notice of Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed

necessary. Except in the event of an emergency situation, such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision hereof after such notice, Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost (together with the cost of attorneys fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Developer for Developer's costs and expenses, including reasonable attorneys' fees.

Section 5.2 Owner's Responsibility. Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling in a manner consistent with the Community-Wide Standards and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Architectural Standards Committee as provided in Article IX hereof, or (ii) do any work which, in the reasonable opinion of the Architectural Standards Committee, would jeopardize the soundness and safety of the Community, reduce the value thereof, or impair any easement thereto.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

Section 6.1 Insurance. The Association, Board, or its duly authorized agent, shall procure and maintain casualty insurance for the Common Properties, liability insurance (in a minimum amount of not less than One Million Dollars (\$1,000,000.00) per occurrence) and such other insurance as it deems necessary or advisable. The Association shall be required to use reasonable efforts to secure insurance policies that will provide the following:

- (a) A waiver of subrogation by the insurer as to any claims against the Association, the Association's Board and the Developer;
- (b) A statement that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification or non-renewal; and
- (c) All liability insurance shall not exclude coverage for claims made by Owners or Members.

All liability insurance shall name the Developer as an additional insured.

Premiums for all insurance on the Common Areas shall be Common Expenses of the Association. All insurance coverage obtained by the Board shall be written in the name of the Association.

In addition to other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; directors' and officers' liability coverage, if reasonably available; a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available; and flood insurance, if required. The amount of fidelity coverage shall be determined in the Board's best business judgment.

Section 6.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall (i) during any period in which construction activity is underway on any Lot, carry or cause its Builder to carry builder's risk insurance for the full value of any improvements and other liabilities associated with the ongoing construction activity on the Lot, and (ii) at all other times, carry blanket all-risk casualty insurance on the Lot(s) and any Dwelling and/or other structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of any Dwelling or other structure, the Owner shall proceed promptly to repair or to reconstruct the damaged parts of the Dwelling or other structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction, which are not covered by insurance proceeds. In the event that the Dwelling or other structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition consistent with the Community-Wide Standard.

Section 6.3 Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of a Common Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance or obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Property to substantially the same condition in which it existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to a Common Property shall be repaired or reconstructed unless the Voting Members representing at least two-thirds (2/3) of the Total Vote decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to a Common Property shall be repaired or reconstructed. If there is no reconstruction then any insurance proceeds shall revert to the Association.

(c) In the event that it should be determined in the manner described above that the damage or destruction to a Common Property shall not be repaired or reconstructed and no alternative improvements are authorized, then the affected portion of the Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

Section 6.4 Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed for payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 6.5 Repair and Reconstruction. If the damage or destruction to a Common Property for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for Special Assessments in accordance with Article VIII. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 7.1 Common Properties. The Association, subject to the rights of the Developer and to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Properties and other improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep them in a good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. Except to the extent otherwise required by the provisions of the Indiana Code relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the power herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further action on the part of Owners.

Section 7.2 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Indiana Code relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those rights and privileges reasonably implied to effect the purposes of the Association. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such power of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public and private utilities, or others, as a Common Expense or by billing directly to Lots to furnish trash collections, water, sewer, and/or security service for the Common Areas and/or the Lots. The Association shall have the right to own or lease (as a Common Property) any drainage system, piping, sewer equipment or materials, lighting equipment or facilities, or any other utility, landscaping or signage equipment or facilities which Developer or the Association deems to be in the best interests of the Community.

The Association shall not, without the affirmative vote or written consent of Voting Members or their alternates representing at least two-thirds (2/3) of the Total Vote, mortgage or hypothecate all or any portion of the Common Areas.

Section 7.3 Agreements. Subject to the prior approval of Developer for so long as Developer owns any Lot or holds the unexpired option to submit Additional Property to the Community, all agreements and determination lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community; and in performing its responsibilities hereunder, the Association, through its Board, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and in no limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board may hire or contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration, and the rules and regulations of the Association.

The Association, through its Board, shall have the right to designate one trash removal service for the Community and the cost of such service shall be allocated to and paid for by Owners of Dwellings within the Community.

Section 7.4 Personal Property and Real Property for Common Use. The Association, acting through its Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The share of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is an appurtenance to such Lot.

Section 7.5 Rules and Regulations. The Association, as provided in Articles IX and X hereof, through its Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include suspension of the right to vote and the right to use any recreational facilities or Common Areas. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce city and county ordinances and to permit Hamilton County or any municipality having jurisdiction over the Property to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 7.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 7.7 Governmental Interests. The Association shall permit the Developer reasonable authority to designate sites within the Property for fire, emergency, police, water, and sewer facilities, parks, and other public facilities.

ARTICLE VIII ASSESSMENTS

Section 8.1 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Community, and maintaining the Community and improvements therein, all as may be more specifically authorized from time to time by the Board.

Section 8.2 Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board to be commenced at the time and in the manner set forth in Section 8.3 and Section 8.4 of this Article. There shall be two (2) types of assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; and (b) Special Assessments as described in Section 8.4 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

Base Assessments shall be levied equally on all Lots subject to an Owner of a multi-Lot situation.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Indiana law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys' fees, to collect same, shall be a charge on the land and shall be a continuing lien upon the Lot against which shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the lien for unpaid assessments shall not apply to the holder of any Mortgage or to the holder of any Mortgage securing a loan made by Developer, its affiliates, successors, or assigns, who takes title to a Lot through Foreclosure, or to

any purchaser of such Lot at such Foreclosure sale. In the event of co-ownership of any Lot all of such co-owners shall be jointly and severally liable for the entire amount of such assessments.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee in an amount determined from time to time by the Board of Directors, for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All assessments shall be pro rated from the date of closing for each Owner. Each Owner by acceptance of a deed to his or her Lot, acknowledges that all Base Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; provided, however, the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may revoke the privilege of paying in installments and require all annual assessments to be paid in full immediately. No Mortgagee shall be required to collect any assessments.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including by way of illustration and not limitation, by non-use of Common Areas, non-use of recreational facilities, or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

At all times the Developer and its successors and assigns are exempt from liability for all assessments (both Base and Special), and Developer shall have the right, by written contract, to exempt any party purchasing a Lot not for its own occupation of a house on such Lot from the liability to pay assessments herein.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Developer or other entities for the payment of some portion of the Common Expenses.

Notwithstanding anything to the contrary contained herein, until the termination of the Class B Control Period, the annual budget, all Base Assessments and all Special Assessments shall be established by the Board without meetings or of concurrence of the Members. Developer, however, in its sole discretion, may waive the forgoing requirement at any time and submit the annual budget, and the approval of any Base Assessments and Special Assessments to the Members for a vote without terminating the Class B Control Period.

Section 8.3 Computation of Base Assessment. It shall be the duty of the Board, at least thirty (30) days before the beginning of each fiscal year of the Association, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution maintaining a reserve fund in accordance with a budget separately prepared.

The Base Assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves.

The total Base Assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual Base Assessments. However, if an Owner has constructed one residence on two Lots, this Owner shall only be subject to one assessment. The total Base Assessments shall then be adjusted accordingly, as there will be fewer total Lots. Upon the submission of Additional Property to the Community, assessments shall continue to be equal and shall be assessed as well against the Lots being added to the Community. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots. In addition, the Board shall take into account the number of Lots subject to assessment under Section 8.7 hereof on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Developer has the right unilaterally to annex Additional Property pursuant to Article II hereof, the Developer may elect on an annual basis, but shall not be obligated, to reduce the resulting assessment for any fiscal year by payment of a subsidy; provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the Members. The payment of such subsidy in any year shall under no circumstances obligate the Developer to continue payment of such subsidy in future years. As long as the Developer subsidizes assessments or is willing to subsidize assessments Developer shall not be required to create or contribute to any reserve fund for the Association.

The Board shall cause a copy of the annual budget and notice of the amount of the Base Assessment to be levied against each Lot for the following year to be delivered to each Owner prior to the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Base Assessment for the next fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Total Vote of the Members. Notwithstanding the foregoing in the event the Board fails for any reason to determine the budget for the succeeding year, or if the Members fail to approve the annual budget, then until such time as a budget shall have been determined as provided herein, the budget and annual Base Assessments in effect for the then current year shall be increased in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1967-69 = 100), or its successor index, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a Special Assessment as provided in Section 8.4 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- (a) management fees and expenses of administration, including legal and accounting fees;
- (b) utility charges for utilities serving the Common Areas and charges for other common services for the Community, including trash collection, snow removal, security service, if any such services or charges are provided or paid by the Association;
- (c) the cost of any policies of insurance purchased for the benefit of all Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board determines to be in the interests of the Association and the Owners;
- (d) the expenses of operation of the Association under the provisions of this Declaration including, without limitation, the maintenance and repair of the Common Properties;
- (e) the expenses of maintenance, operation, and repair of other amenities and facilities servicing the Community, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;
- (f) the expenses of the New Construction Committee and the Architectural Standards Committee which are not defrayed by plan review charges;
- (g) real and personal property taxes assessed and levied against the Common Areas;
- (h) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;
- (i) such other expenses as may be determined from time to time by the Board of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

(j) the establishment and maintenance of a reasonable reserve fund or funds (i) for inspections, maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be inspected, maintained, repaired, or replaced on a periodic basis, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

Section 8.4 Special Assessments.

(a) Entire Membership. The Association may levy Special Assessments from time to time, provided any such assessment receives the affirmative vote or written consent of Members representing at least two-thirds (2/3) of the Total Vote and the affirmative vote or written consent of the Class B Member (if such exists). Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Less Than All Members. The Association, through its Board, may levy a Special Assessment against any Member individually and against such Member's Lot to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provisions of the Declaration, and amendments thereto, the Articles, the By-Laws, or the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

(c) Imposition of Additional Fees Upon Individual Members. In addition to the rights of the Association to levy Special Assessments against individual Members in the manner contemplated under Section 8.4(b), above, the Association, through its Board, may impose additional fees upon individual Members on account of any violation by that Member, or of that Member's Lot, with any of the provisions of this Declaration. Prior to, and as a pre-condition to the imposition of any such additional fee, the Board of Directors will instruct the officers of the Association to deliver a written notice by certified mail, return receipt requested, to the Member in question whom the Board of Directors has determined to be in violation of the provisions of this Declaration (herein an "Initial Non-Compliance Notice"). The provisions of this Declaration which the Board of Directors determines are being violated will be listed and set forth, with specificity, in any such Initial Non-Compliance Notice, and the Initial Non-Compliance Notice will specify, as to each violation, a time period within which the violation needs to be cured in order to avoid the imposition of any additional fees hereunder. The Board of Directors will be entitled to determine what amount of time it deems to be appropriate, under the circumstances, for curing any such violation. The Initial Non-Compliance Notice will also include provisions referencing this Section and reiterating the right of the Association to impose the additional fees contemplated herein, in addition to any other rights or remedies that the Association may have with respect to any such violation. If such a Member fails to cure the specified violation within the time period provided in an Initial Non-Compliance Notice, the Board of Directors shall have the right, but no obligation, to instruct the officers of the Association to deliver a second notice (herein referred to as an "Additional Fee Notice") to such Member imposing an additional fee" upon that Member in an amount specified in the Additional Fee Notice which will not exceed \$100.00 for each specified violation, which additional fee will be due from such Member immediately upon receipt thereof, and shall continue to be due on a monthly basis, as of the same day of each subsequent month that corresponds to the date of the Additional Fee Notice, until such time as the violation(s) specified in the Initial Non-Compliance Notice have been cured. Any such additional fee which may become due hereunder shall be and constitute a lien against the applicable Lot(s), collectable by the Association, together with attorneys' fees and reasonable costs of collection, in the manner contemplated under Section 8.5, below. The imposition of any such additional fees by the Association in the manner permitted herein shall not limit or otherwise restrict the Association from exercising any other rights or remedies provided for under this Declaration or at law or in equity on account of any such violation. In addition, such other rights or remedies will not be limited or otherwise affected if the Board of Directors elects not to pursue the imposition of any additional fees in the manner provided for in this Section 8A(c).

Section 8.5 Lien for Assessments. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments and additional fees due hereunder of priority 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 Lot at Foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of Foreclosure.

Suit to recover a money judgment for unpaid assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8.6 Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget to 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 in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect to amount and timing by annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Section 8.3.

Section 8.7 Date of Commencement of Annual Base Assessments. The annual Base Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a Person other than Developer and shall be due and payable in such manner and on such schedule as the Board may provide. Annual Base Assessments and any outstanding Special Assessments shall be adjusted on a pro rata basis for such Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is first conveyed. Base and Special Assessments for Lots in portions of any Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the day on which such Lot is conveyed to a Person other than Developer and shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Anything contained herein to the contrary notwithstanding, Developer shall not be responsible for the payment of Base or Special Assessments on Lots which it or its affiliates own and which do not contain occupied residences (except as hereinafter provided), provided that Developer covenants and agrees to pay Base and Special Assessments for each Lot owned by Developer or an affiliate and containing occupied residences.

Section 8.8 Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges, and costs (including reasonable attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial Foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments, which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due.

ARTICLE IX

ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 9.1 Purpose. In order to preserve the natural setting and beauty of the Community, to establish and preserve a harmonious and aesthetically pleasing design for the Community, and to protect and promote the value of the Property, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in Articles IX and X.

Nothing shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 9.2 and 9.3 below. The Board may establish reasonable fees to be charged by the committees on behalf of the Association for reviewing of applications hereunder and may require such fees to be paid in full prior to review of any application.

This Article shall not apply to the activities of the Developer, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association.

The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 9.2 and 9.3 of this Article IX. This Article may not be amended without the Developer's written consent so long as the Developer owns any land subject to this Declaration or subject to Annexation to the Community.

The committees established in Sections 9.2 and 9.3 of this Article IX may be merged into one committee by Developer, in its sole discretion, during the Class B Control Period.

Section 9.2 New Construction Committee. The New Construction Committee (the "NCC") shall consist of at least three (3), but no more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred percent (100%) of the Property has been developed and conveyed to purchasers in the normal course of development and sale, the Developer retains the right to appoint all members of the NCC, who shall serve at the discretion of the Developer. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Developer.

Upon the expiration of such right, the Board shall appoint the members of the NCC who shall serve and may be removed at the discretion of the Board. The members of the NCC may include persons who are not Members of the Association. Members of the NCC may, or may not, be members of the Board and, if not members of the Board, may be compensated for serving as a NCC member and such costs shall be classified as a Common Expense.

The NCC shall prepare and, on behalf of the Board, shall promulgate design and development guidelines, variance rules and regulations, and application and review procedures. Copies of such guidelines, rules and regulations, and guidelines shall be available from the NCC for review. The guidelines and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, Builders, and developers who seek to engage in development of or construction upon all or any portion of the Property and such Owners, Builders and developers shall conduct their operations strictly in accordance therewith.

The NCC shall be disbanded at the time that Dwellings have been constructed on all of the Lots in the Community, and the duties of the NCC shall thereafter be performed by the ASC.

Section 9.3 Architectural Standards Committee. The Board may establish an Architectural Standards Committee (the "ASC") to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the ASC may include persons who are not Members of the Association. Members of the ASC may or may not be members of the Board.

The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The ASC shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice Chairman, shall be presiding officer at its meetings. The ASC shall meet at least once in each calendar month, as well as upon call of the

chairman, and all meetings shall be held at such places as may be designated by the chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ASC shall constitute the action of the ASC on any matter before it. The ASC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ASC in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense. Each member of the ASC may be paid a stipend or honorarium as from time to time determined by the Board.

The ASC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto; provided, however, the ASC may delegate this authority to the Board. Notwithstanding the above, the ASC shall not take any action or approve any plans inconsistent with the guidelines promulgated by the NCC while the NCC is in existence. The ASC shall promulgate detailed standards or procedures governing its areas of responsibility and practice, consistent with those of NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the ASC for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling, or to paint the interior of his Dwelling any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Dwelling visible from outside the Dwelling shall be subject to approval hereunder. The ASC shall make every effort to approve or to disapprove such plans or to request additional information within twenty-one (21) days after submission of completed plans, proposals, specifications or drawings and any additional information having been requested by the ASC.

Section 9.4 No Waiver of Future Approvals. The approval of either the NCC or ASC of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 9.5 Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations set forth by the NCC. Such variance may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the zoning code or restrictions set forth in the body of this Declaration or a recorded Plat, or (c) stop the Committee from denying a variance in other circumstances. For purpose of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9.6 Compliance with Guidelines. Any Builder, contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the NCC or ASC may be excluded by the Board from the Property without liability to any Person.

Section 9.7 Construction of Improvements. Dwellings may not be temporarily or permanently occupied until the exteriors thereof have been completed and a certificate of occupancy (or other appropriate consent from the applicable governmental authority) for such Dwelling has been issued. No shack, tent, barn, or other outbuilding shall be permitted on any Lot at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house, rabbit hut, pig pen, dog run or other similar yard structure be constructed or allowed to remain on any Lot.

Section 9.8 Responsibilities During Construction. In addition to those requirements listed in Sections 3.7, 3.8 and 3.9, the Lot Owner shall be responsible that all the following conditions are met.

(a) Construction of a Dwelling on a Lot must be completed within nine (9) months from the date construction is commenced.

(b) When a basement and/or a foundation of a residence is constructed, stone shall be installed over the path of the driveway and shall be level with curb at the lot line to avoid curb breakup.

(c) No track vehicles or heavy equipment vehicles shall be operated or unloaded on any street.

(d) During the construction period, the Lot shall be maintained in a clean and orderly manner at all times. All loose shingles, lumber, bricks, blocks, drywall, insulation, or other building material which can blow onto adjacent Lots shall not be left lying around. Construction trash shall be contained in a trash fence and shall be removed from the Lot once per week or contained in a dumpster provided by a trash disposal service, which will empty the container as needed.

(e) The Lot Owner shall be responsible for removal of dirt, mud or debris or other foreign material of any kind which may be deposited upon the road or easements from construction on the Lot. If such deposits occur, then the Lot Owner shall make provisions to remove such deposits within five (5) days or the committee may remove such deposits and charge the Lot Owner. The Lot Owner shall comply with its obligations under drainage and storm water regulations and any soil erosion control plan in effect or as otherwise required by law.

(f) All utility services to the Lot, including, but not limited to, water, power, sanitary sewers, telephone or cable, shall be shown on the plot plan and said services shall not undermine the curbs or alter the subsurface or surface drainage system.

(g) At all times the Lot Owner shall ascertain that all storm water drainage swales per the approved engineering plans are adhered to and maintained to prevent ponding water.

(h) Upon completion of construction, each Owner shall cause its Builder and any other contractor to immediately remove all equipment, tools, and construction material and debris from the Lot on which such construction has been completed.

Section 9.9 Architectural Approval. To preserve the architectural and aesthetical appearance of the Community, no construction of improvements of any nature whatsoever shall be commenced or maintained by an Owner, other than Developer, with respect to construction affecting the exterior appearance of any Dwelling or with respect to any other portion of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, guest or servants quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the NCC or ASC, as the case may be, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the NCC or ASC as the case may be, as to the compliance of such plans and specifications with such standards as may be published by the respective committees from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the respective committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".

Following approval of any plans and specifications by a committee, representatives of the committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event a committee shall determine that such plans and specification have not been approved or are not being complied with, the committee shall be entitled to enjoin further construction and to require the removal or

correction of any work in place which does not comply with approved plans and specifications.

Section 9.10 Landscaping Approval. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever with respect to the initial landscaping of a Lot shall be implemented and installed by an Owner other than Developer, unless and until the plans therefore have been submitted to and approved in writing by the appropriate committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and related matters shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. The landscaping plan for each Lot must be carried out and completed within sixty (60) days after the completion of the Dwelling unless such deadline would fall between December 1 and April 1 in which event the landscaping plan for such Lot shall be completed no later than the next succeeding May 30.

Section 9.11 Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Developer, the Association, nor the NCC or ASC shall be responsible or liable for: (i) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article IX; (ii) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (iii) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (iv) any defects in construction undertaken pursuant to such plans and specifications.

Section 9.12 Building Restrictions. All Dwellings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, including, without limitation, the filing of a site plan with the Town of Westfield or Hamilton County, Indiana, (or any other governmental authority having jurisdiction) and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the appropriate committee (e.g. NCC or ASC).

Section 9.13 Parkway Trees. Each Owner of a Lot shall install and maintain one to four parkway trees in accordance with rules and regulations hereafter adopted by the Developer or the Association. Such rules shall specify the number of trees required based upon the size of the Lot, the location of the trees, the species of the trees and the size of the required trees. It shall be the obligation of the Owner of each Lot to not only install and maintain such parkway trees but to replace the parkway trees if necessary. To maintain consistency the Developer reserves the right to require one supplier to initially install parkway trees. No irrigation lines or heads are to be installed between the curb and sidewalk as this is where parkway trees are to be planted. Any damage done during planting of parkway trees is the sole responsibility of the Property Owner. In the event an Owner fails to maintain or replace a parkway tree as required herein, the Association shall have the right to maintain and replace said tree and charge the cost of such to the Owner in the same manner as a Special Assessment.

Section 9.14 Mailboxes. Each Owner of a Lot shall install and maintain a mailbox which shall be in accordance with the design, type and location of a mailbox required by Developer or the Association from time-to-time so as to maintain uniformity of appearance throughout different areas of the Community.

ARTICLE X
USE RESTRICTIONS

The Association, acting through its Board, shall have authority to make and to enforce standards and restrictions governing the use of the Property, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by the vote of Members, representing a majority of the Total Vote and upon the consent of the Class B Member so long as such membership shall exist.

Section 10.1 Use of Lots. Except as permitted by Section 10.26 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. No more than one (1) Dwelling shall be located on any Lot. The use of a portion of a Dwelling as an office by an Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 10.26 below.

Section 10.2 Exterior Appearance. No chain link fences shall be permitted within the Community, except with regard to maintenance areas within the Common Areas and those fences erected by the Developer. Further, no foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any window-mounted heating or air conditioning units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other item be hung on any railing, fence, hedge, or wall. When not in use, all garage doors shall be kept closed.

Section 10.3 Signs. No signs of any kind shall be erected within the Community, or permitted within any windows, without the written consent of the Board, except standard real estate "for sale" signs, entry and directional signs installed by Developer and such signs as may be required by legal proceedings. No business signs, flags, banners or similar items advertising or providing directional information shall be erected by any Owner. If permission is granted to any person to erect a sign, including name and address signs within the Community, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

Section 10.4 Parking and Prohibited Vehicles.

(a) **Parking.** Vehicles shall be parked only in the garages or on driveways serving the Lots. On street parking is highly discouraged. 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. The Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

No Owners or other occupants of any portion of the Community 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, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-quarters of a ton, 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 Property except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property 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.

Section 10.5 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on

any portion of the Property, except that dogs, cats or other usual and common household pets may be permitted on a Lot, subject to rules and regulations adopted by the Association through its Board. However, those pets which are permitted by any Owner or occupant to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the Owner of any portion of the Community, shall be removed from the Community upon request of the Board; if the Owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside the Owner's Lot be confined on a leash held by a responsible person. No pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. If an Owner elects to install any type of "invisible fence" or similar electronic restraining device to keep a household pet from leaving the boundaries of that Owner's Lot, the perimeter of any such invisible fence or similar electronic restraint will not be permitted to extend beyond the front building set back line as described herein or otherwise on any Plat. In the case of any corner Lot located at the intersection of two streets, having a front building set back line from both streets, the restrictions set forth herein shall apply to both front set back lines.

Section 10.6 Quiet Enjoyment. No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No electric insect killers may be used. The Developer or the Association may order the relocation of any wood piles which are unsightly.

Section 10.7 Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Nothing which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Community or which result in a cancellation of any insurance for any portion of the Community, or which would be in violation of any law or governmental code or regulation shall be permitted in the Community. Without limiting the generality of the foregoing provisions, no horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Community. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Community shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 10.8 Antennas. No exterior antennas, aerials, satellite dishes, or other telecommunication apparatus (herein collectively referred to as "Antenna Systems") larger than One (1) meter (i.e. 39.37") in diameter (the "Maximum Size") and intended for the reception of television, radio, satellite or other telecommunication signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot. Any such Antenna System that does not exceed the Maximum Size shall be permitted on a Lot only if such Antenna System is aesthetically concealed by landscaping or otherwise installed so as not to constitute a nuisance or to otherwise be offensive to any other Lot Owners. Under no circumstances shall any such Antenna System be installed without the approval of the Board, or if such decision is delegated to it, the Architectural Standards Committee. In either case, the Board or the Architectural Standards Committee will not impair installation, maintenance or use of any such Antenna System and, in this regard, neither the Board nor the Architectural Standards Committee will (i) unreasonably delay or prevent installation, maintenance or use of any such Antenna System, (ii) impose any requirement which would unreasonably increase the cost of installation, maintenance or use of any such Antenna System, or (iii) preclude reception of an acceptable quality signal by any such Antenna System.

No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Community, provided however that the Developer and/or the Association shall have the right, without obligation, to erect an Antenna System or cable system for the benefit of all or a portion of the Property, should any such master system or systems be utilized by the Association in a manner that requires the use of any such Antenna System. Except for the rights expressly reserved herein for the benefit of the Association, no commercial telecommunications towers may be placed on any Lot or on any Common Properties.

Section 10.9 Garbage Cans, Tanks, Etc. All mechanical equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located and adjacent to the Lot. No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers.

Section 10.10 Subdivision of Lot and Time Sharing. Except for changes made by Developer with respect to Lots it owns, no Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board.

No Lot shall be made subject to any type of timesharing, traction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 10.11 Firearms. The discharge of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paint guns and other firearms of all types, regardless of size or caliber. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this section.

Section 10.12 Pools. No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, nothing herein shall preclude installation and use of in ground pools, hot tubs or spas with prior approval pursuant to Article IX of this Declaration.

Section 10.13 Tents, Trailers and Temporary Structures. Except as maybe permitted by the Developer or the NCC during initial construction within the Property, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Board or the Developer.

Section 10.14 Outbuildings. No mini barns or outside storage facilities of any type are allowed.

Section 10.15 Drainage, Water Wells and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow. No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot, except for wells maintained solely for irrigation purposes. All such irrigation wells must receive the prior written approval of the ASC.

Section 10.16 Tree Removal. No trees shall be removed except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article III and Article IX of this Declaration. In the event of an intentional or unintentional violation of this section, the violator may be required by the committee having jurisdiction to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion or as is dictated in Article III, Section 3.7 and Section 3.8.

Section 10.17 Traffic Regulation. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Community shall be subject to the provisions of the laws of the State of Indiana, Hamilton County, and the Town of Westfield concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce any such rules and regulations by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Indiana, Hamilton County, and/or the Town of Westfield, on the one hand, and such rules and regulations promulgated by the Association, on the other hand, any such conflict will be resolved in favor of application of any governmental rules and regulations, unless the rules and regulations imposed by the Association (i) are more stringent than those established by governmental authorities, and (ii) do not conflict with those rules and regulations established by governmental authorities. All vehicles of any kind and nature which are operated on the streets in the Community shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Community.

Section 10.18 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 10.19 Lighting. Except for seasonal holiday decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights must be approved in accordance with Article IX of this Declaration; provided, however, each Owner must continually maintain at its own expense a yard light of a design established by the Developer or the Association pursuant to Section 9.14.

Section 10.20 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article IX hereof.

Section 10.21 Artificial Vegetation and Exterior Sculpture. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculptures, fountains, flags, and similar items must be approved in accordance with Article IX of this Declaration.

Section 10.22 Driveways. All driveways must be constructed of concrete and shall thereafter be maintained solely as concrete driveways unless otherwise approved by the Board.

Section 10.23 Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Property, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Property. No docks, piers, or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Developer or the Association.

Section 10.24 Fences. In addition to the provisions of Section 10.2, no hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article IX of this Declaration. In this regard, the ASC may, from time to time, establish more specific fence guidelines and Owner's and/or prospective Owners shall be entitled to obtain a copy of any such guidelines from the Association and will be deemed to have notice and knowledge of any additional restrictions set forth therein, and bound by those restrictions, regardless of whether such Owner or prospective Owner actually obtained a copy of any such guidelines from the Association.

Section 10.25 Business Uses. No garage sale, moving sale, rummage sale or similar activity shall be conducted

by an Owner within the Community without the approval of the Association. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling may conduct business activities within the Dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Community; and (d) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Community nor shall it apply to any activity conducted by the Developer, his engineer, or a Builder approved by the Developer with respect to its development and sale of the Property or its use of any Lots or Dwellings which it owns within the Property.

Section 10.26 Basketball Goals, Playground Equipment, Etc. No basketball goals shall be attached to any Dwelling and backboards shall be made only of transparent materials and the location of any basketball goal shall be subject to the approval of the ASC. No playground equipment, tree houses, or similar structures shall be erected on any Lot except in accordance with Rules and Regulations established by the Board from time to time or as otherwise approved by the Board. No full size portable goals will be allowed; however, small portable children's goals made of plastic are allowable so long as goals are kept away from public streets. These temporary goals shall be kept in the garage when not in use.

Section 10.27 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 10.28 Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 10.29 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Developer and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwellings or the developing of Lots and Dwellings, Common Areas, and Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved by Developer from time to time, provided that the location of any construction trailers of any assignees of Developer's rights under this Section 10.29 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and Dwellings and for related activities.

Section 10.30 Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall

be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation-of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

ARTICLE XI
RULEMAKING

Section 11.1 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwellings, and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Members, and to any prospective Owner or prospective Mortgagee who, in either case, requests a copy of any and all such rules, regulations and amendments thereto, by first class mail upon the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Association by a majority of the Total Vote cast by the Members as set forth in the By-Laws, provided that in the event of such vote, such action must also be approved by Developer for so long as Developer owns any Lot or holds the unexpired option to submit Additional Property to the Community.

Section 11.2 Authority and Enforcement.

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power, after fifteen (15) days written notice to Owner or occupant of said violation, and failure by said Owner or occupant to cure the violation:

(i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or occupant who is guilty of such violation;

(ii) to suspend an Owner's right to vote in the Association; and

(iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

(iv) to impose special assessment and fines as set out in Section 8.4 (b)(c). The Board shall have the power to impose all or any combination of these sanctions. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Developer, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Developer, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against

either the Developer or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

➤ **ARTICLE XII**
GENERAL PROVISIONS

Section 12.1 Control by Developer. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Developer hereby retains the right to appoint and remove any member or members of the Board of the Association until the termination of the Class B Control Period as provided by Section 4.2 of the Declaration and the By-Laws. Every grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, agrees that Developer shall have the authority to appoint and remove directors of the Association in accordance with these provisions. Upon the expiration of the period of Developer's right to appoint and remove directors of the Association, such right shall pass to the Members, as more specifically set forth in the By-Laws. At such time, Developer shall deliver to the new Board all books, accounts, and records, if any, which Developer has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Developer has in its possession.

Section 12.2 Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) 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 more than seventy percent (70%) of the then Owners has been recorded within the year preceding 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, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

Section 12.3 Amendment.

General. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Procedures.**

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

(b) **General Amendments.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(c) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (i) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (ii) the provisions of this Declaration with respect to casualty insurance to be maintained by the Association, or (iii)

the provisions of this Declaration with respect to reconstruction or repair of the Common Area or Improvements in the event of fire or any other casualty or disaster, or (iv) the provisions of this Declaration establishing the Architectural Review Board and providing for its functions, or (v) the provisions of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(d) Additional Special Amendments. No amendment to this Declaration shall be adopted which changes (i) the method of voting, or (ii) the responsibility for maintenance, repair or replacement of the Common Area, or (iii) the right to use the Common Area, or (iv) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least seventy-five (75%) of the votes of Owners and consent of Mortgagees holding mortgages on fifty percent (50%) of the Lots subject to mortgages.

Notwithstanding any provision contained herein to the contrary, no amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first Mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of this Declaration. Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting at which such amendment is to be considered (provided proper notice of such meeting was timely given to such Mortgagee), or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors, of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

Further Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Dwelling Unit within and upon Developer's Property, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation: to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make, or consent to any amendments described in this Article XII on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. This right of the Developer to act pursuant to rights reserved or granted under this Article XII shall terminate at such time as the Developer no longer holds or controls title to any part or portion of Developer's Property.

Section 12.4 Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an

officer, director or committee member. The officers, directors, and committee members 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, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member 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, director, or committee member or former officer, director, or committee member may be entitled. The Association may, 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 12.5 Easements for Utilities, Etc. There is hereby reserved unto Developer, so long as the Developer owns any Property, the Association, and the designees of each (which may include, without limitation, the Town of Westfield and Hamilton County, Indiana, and any utility), blanket easements upon, across, over and under all of the Property as more specifically set forth in Article III, Section 3.4 of this Declaration. Without limiting the generality of the foregoing, there are hereby reserved for the water company supplying water to the Community, its successors and assigns, easements across all Lots and the Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Section 12.6 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records of Hamilton County, Indiana. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

Section 12.7 Right of Entry. The Association shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all 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 Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling 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 within a reasonable time after request by the Board.

Section 12.8 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana law.

Section 12.9 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Members representing at least two thirds (2/3) of the Total Vote. However, this Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

Section 12.10 Use of the Word "Bainbridge". No Person shall use the word "Bainbridge" or any derivative thereof in any printed or promotional material without the prior written consent of the Developer. However, Owners may use the terms "Bainbridge" in printed or promotional matter where such term is used solely to specify that particular property is located within Bainbridge, and the Association shall be entitled to use the word "Bainbridge" in their

respective names.

Section 12.11 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, the Developer, nor any successor Developer shall in any way be considered insurers or guarantors of security within the Property, nor be held liable for loss or damage to property, nor be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and occupants of any Lot, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association, its Board and committees, Developer, or any successor Developer are not insurers and that each Owner and occupant of any Lot and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons, to Lots and Dwellings and to the contents of Lots and Dwellings and further acknowledges that the Association, its Board and Committees, Developer, or any successor Developer have made no representations or warranties nor has any Owner, occupant, tenant, guest, or invitee relied upon any representations or warranties expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Property.

Section 12.12 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

Section 12.13 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12.14 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 12.15 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of Developer and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

Section 12.16 No Trespass. Whenever the Association, the Developer, the New Construction Committee, the Architectural Standards Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Community, the entering thereon and the taking of such action shall not be deemed to be a trespass.

Section 12.17 Notices. Notices required hereunder shall be in writing and shall be hand delivered or sent by United States Mail, postage prepaid. All notices to Owners shall be sent or delivered to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots.

All notices to the Association shall be delivered or sent in care of Developer at the following address:

BMR Properties, LLC
1453 Greyhound Pass
Carmel, Indiana 46032

or to such other address as the Association may from time to time notify the Owners. All notices to Developer shall be delivered or sent to Developer at the above address or such other address as Developer may from time to time notify the Association.

ARTICLE XIII
DEVELOPER'S RIGHTS

Any or all of the special rights and obligations of the Developer may be transferred to other Persons, 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 Developer and duly recorded in the public records of Hamilton County, Indiana; provided, however, Developer may assign any and all of its rights to the Association upon the end of the Class B Control Period. Nothing in this Declaration shall be construed to require Developer or any successors to develop any Additional Property.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as the initial sale of Lots shall continue, it shall be expressly permissible for Developer to maintain and carry on upon portions of the Common Areas such facilities and activities as are convenient or incidental to the sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Developer shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by the Developer and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

Notwithstanding anything contained herein to the contrary, during the Class B Control Period, Developer hereby reserves to itself the exclusive right to perform all the functions and responsibilities of the Association and to manage the Community in accordance with this Declaration. During such time, Developer will have the right to appoint any entity, including itself or an affiliated entity, to perform such management functions provided the compensation payable is comparable to the charge that would be made by any non-affiliated entity and any such management agreement shall be subject to cancellation by the Association upon no more than ninety (90) days notice.

So long as Developer continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Property without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer.

This Article may not be amended without the express written consent of the Developer; provided, however, the rights contained in this article shall terminate upon the earlier of (a) December 31, 2009, or (b) upon recording by Developer of a written statement that all sales activity has ceased.

IN WITNESS WHEREOF, a duly authorized officer of the undersigned Developer has executed this Declaration this 12 day of ~~June~~ August, 2004.

BMR PROPERTIES, LLC

By:  VP
Richard Schneider, Vice President

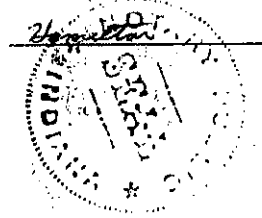
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Richard Schneider, on behalf of BMR PROPERTIES LLC, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and notarial seal this 12th day of ^{August} ~~June~~, 2004.

My Commission Expires:

March 9, 2008
My County of Residence



James J. Schneider
Notary Public Signature

JAMES J. SCHNEIDER
Printed

This Instrument prepared by Richard Schneider, Vice President of BMR Properties, LLC, 1453 Greyhound Pass, Carmel, Indiana 46032.

Exhibit "A"

EXHIBIT A - LAND DESCRIPTION

TRACT 1:

PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH, REANGE 3 EAST IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 3 EAST; THENCE NORTH 00 DEGREES 12 MINUTES 55 SECONDS WEST (ASSUMED BEARING) ON THE WEST LINE OF SAID SOUTHEAST QUARTER 190.00 FEET TO THE CENTERLINE OF GREYHOUND PASS; THENCE SOUTH 85 DEGREES 57 MINUTES 33 SECONDS EAST ON SAID CENTERLINE 32.32 FEET TO THE EASET RIGHT-OF-WAY INE OF THE LOUISVILLE & NASHVILLE RAILROAD (MONON DIVISION); THENCE SOUTH 00 DEGREES 27 MINUTES 08 SECONDS EAST ON SAID EAST RIGHT-OF-WAY LINE 702.13 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 38 SECONDS EAST 280.00 FEET; THENCE NORTH 80 DEGREES 52 MINUTES 41 SECONDS EAST 220.00 FEET TO THE PLACE OF BEGINNING OF THE WITHIN DESCRIBED REAL ESTATE; THENCE NORTH 80 DEGREES 52 MINUTES 41 SECONDS EAST 155.00 FEET; THENCE NORTH 88 DEGREES 32 MINUTES 38 SECONDS EAST 1030.53 FEET TO THE CENTERLINE OF GREYHOUND PASS' THENCE SOUTH 51 DEGREES 43 MINUTES 57 SECONDS EAST ON THE CENTERLINE OF GREYHOUND PASS 89.52 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET, THE RADIUS POINT OF WHICH LIES SOUTH 38 DEGREES 16 MINUTES 03 SECONDS WEST 300.00 FEET FROM SOUTH 38 DEGREES 16 MINUTES 03 SECONDS WEST 300.00 FEET FROM SAID POINT; THENE SOUTHEASTERLY, CURVING TO THE RIGHT ON SAID CENTERLINE AND ARC DISTANCE OF 4.19 FEET' THENCE SOUTH 00DEGREES 36 MINUTES 46 SECONDS EAST 140.14 FEET TO THE SOUTH LINE OF REAL ESTATE CONVEYED TO THIRTY-ONE INVESTMENT COMPANY, PER QUITCLAIM DEED RECORDED ON PAGES 356 AND 357 OF DEED RECORD 266 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA; THENCE SOUTH 88 DEGREES 32 MINUTES 38 SECONDS WEST ON SAID SOUTH LINE 1254.14 FEET TO THE SOUTHEAST CORNER OF REAL ESTATE DESCRIBED IN A REAL ESTATE CONDITIONAL SALES CONTRACT RECORDED ON PAGE 969 OF MISCELLANEOUS RECORD 188 IN SAID RECORDER'S OFFICE; THENCE NORTH 01 DEGREES 27 MINUTES 23 SECONDS WEST ON THE EASTERLY LINE OF SAID REAL ESTATE 179.32 FEET TO THE PLACE OF BEGINNING.

TOGETHER WITH AND SUBJECT TO THE RIGHT-OF-WAY FOR GREYHOUND PASS, PER ACKNOWLEDGEMENT OF DEDICATION AND ACCEPTANCE, RECORDED IN MISCELLANEOUS RECORD 182, PAGES 31-34 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 3 EAST, OF THE SECOND PRINCIPAL MERIDIAN, IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NOTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 0 DEGREES 12 MINUTES 55 SECONDS WEST (ASSUMED BEARING) ON THE WEST LINE OF SAID SOUTHEAST QUARTER 190.00 FEET TO THE CENTERLINE OF GREYHOUND PASS; THENCE SOUTH 85 DEGREES 57 MINUTES 33 SECONDS EAST ON SAID CENTERLINE 32.32 FEET TO THE EAST RIGHT OF WAY LINE OF THE LOUISVILLE & NASHVILLE RAILROAD (MONON DIVISION); THENCE SOUTH 0 DEGREES 27 MINUTES 08 SECONDS EAST ON SAID RIGHT-OF-WAY LINE 702.13 FEET, THENCE NORTH 88 DEGREES 32 MINUTES 38 SECONDS EAST 280.00 FEET; THENCE NORTH 80 DEGREES 52 MINUTES 41 SECONDS EAST 220.00 FEET TO THE NORTHWESTCORNER OF THE LAND DESCRIBED IN INSTRUMENT #93-35715 AND THE POINT OF BEGINNING OF THIS DECIPTION SAID POINT OF BEGINNING OF THIS DESCRIPTION SAID POINT OF BEGINNING BEING MARKED BY A CAPPED REBAR; THENCE SOUTH 4 DEGREES 20 MINUTES 34 SECONDS EAST 179.59 FEET TO THE SOUTH LINE OF THE LAND DESCRIBED IN SAID

EXHIBIT A - CONT'D

INSTRUMENT #93-35715, 9.04 FEET TO THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN SAID INSTRUMENT #93-35715 SAID POINT BEING MARKED BY A CAPPED REBAR; THENCE NORTH 1 DEGREES 27 MINUTES 22 SECONDS WEST ALONG THE WEST LINE OF THE LAND DESCRIBED IN SAID INSTRUMENT #93-35715, 179.36 FEET TO THE POINT OF BEGINNING.

TRACT 2:

PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 3 EAST IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA.

DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER SECTION 13, TOWNSHIP 18 NORTH, RANGE 3 EAST; THENCE NORTH 00 DEGREES 12 MINUTES 55 SECONDS WEST (ASSUMED BEARING) ON THE WEST LINE OF SAID NORTHEAST QUARTER 190.00 FEET TO THE CENTER LINE OF GREYHOUND PASS; THENCE SOUTH 85 DEGREES 57 MINUTES 33 SECONDS EAST ON SAID CENTERLINE 275.80 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET; THENCE SOUTHEASTERLY ON SAID CENTERLINE AND CURVE

TO THE RIGHT 107.90 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 65 DEGREES 21 MINUTES 07 SECONDS EAST ON SAID CENTERLINE AND TANGENT WITH SAID CURVE 100.39 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 375.00 FEET; THENCE SOUTHERASTERLY ON SAID CENTERLINE AND CURVE TO THE LEFT 170.83 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 88 DEGREES 32 MINUTES 55 SECONDS EAST ON SAID CENTERLINE AND TANGENT WITH SAID CURVE 376.99 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 300.00 FEET; THENCE SOUTHEASTERLY ON SAID CENTERLINE AND CURVE TO THE RIGHT 225.92 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 48 DEGREES 18 MINUTES 15 SECONDS EAST ON SAID CENTERLINE 251.55 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 5012.23 FEET; THENCE SOUTHEASTERLY ON SAID CENTERLINE AND CURVE TO THE LEFT 49.70 FEET TO THE PLACE OF BEGINNING OF THE REAL ESTATE HEREIN DESCRIBED; THENCE CONTINUING SOUTHEASTERLY ON SAID CENTERLINE AND CURVE 250.21 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 51 DEGREES 43 MINUTES 57 SECONDS EAST ON SAID CENTERLINE AND TANGENCY WITH SAID CURVE 102.27 FEET; THENCE SOUTH 88 DEGREES 32 MINUTES 38 SECONDS WEST 1030.53 FEET; THENCE SOUTH 80 DEGREES 52 MINUTES 41 SECONDS WEST 155.00 FEET TO A POINT WHICH IS 367.69 FEET SOUTH 42 DEGREES 46 MINUTES 39 SECONDS EAST FROM THE RADIUS POINT OF A CUL-DE-SAC AT THE SOUTHERN TERMINUS OF ASCOT HILL SOUTH; THENCE NORTH 03 DEGREES 48 MINUTES 09 SECONDS EAST 251.74 FEET TO A POINT 894.04 FEET SOUTH 88 DEGREES 32 MINUTES 38 SECONDS WEST OF THE PLACE OF BEGINNING; THENCE NORTH 88 DEGREES 32 MINUTES 38 SECONDS EAST 894.04 FEET TO THE SAID PLACE OF BEGINNING.

Subject to all legal easements, rights of ways and other restrictions.

1400
B

BEST POSSIBLE IMAGE
ALL PAGES

200500040109
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
06-29-2005 At 01:44 pm.
AMEND DECL 14.00

CROSS REFERENCE NO. 200400057461

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS AND RESTRICTIONS OF BAINBRIDGE**

This FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS OF BAINBRIDGE ("Amendment") is made this 29th day of June, 2005 by BMR PROPERTIES, LLC, an Indiana limited liability company ("Declarant").

WITNESSETH:

WHEREAS, on August 16, 2004, Declarant filed of record in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 200400057461, a Declaration of Covenants, Conditions and Restrictions For Bainbridge ("Declaration");

WHEREAS, on September 10, 2004, Declarant filed of record in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 200400063748, a Bainbridge Subdivision Final Plat ("Plat");

WHEREAS, the real estate that is the subject of the Plat is encumbered by and subject to the terms of the Declaration; and

WHEREAS, Declarant desires to amend the Declaration with respect to certain restrictions and to add additional restrictions.

NOW, THEREFORE, the Declaration is amended as follows:

1. Any and all buildings, structures or other improvements located in, on or across that certain parcel of land designated as Lot 1 on the Plat ("Lot 1") as of the date of this Amendment shall not be a part of, and are hereby deemed expressly excluded from, any and all restrictions, standards and requirements set forth in the Declaration. Any future improvements to Lot 1 shall be subject to the terms of the Declaration, as amended from time to time.

2. Section 9.13 "Parkway Trees" shall be and hereby is removed and deleted in its entirety.

3. Any and all residential homes constructed on the Property (as that term is defined in the Declaration) and subject to the terms of the Declaration, shall have the following minimum requirements in addition to any other requirements or restrictions set forth in the Declaration:

- One (1) and One and One-Half (1 ½) story homes shall have a minimum of two thousand (2,000) square feet of livable space on the ground floor; and

- Two (2) story homes shall have a minimum of three thousand five hundred (3,500) square feet of livable space in the aggregate on all above ground floors; and a minimum of one thousand six hundred (1,600) square feet of livable space on the ground floor.

4. To the extent not amended by this Amendment, all other terms, provisions and conditions of the Declaration shall remain the same unless otherwise amended according to its terms.

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to Declaration of Covenants, Conditions and Restrictions for Bainbridge to be executed the day and year first above written.

BMR PROPERTIES, LLC

By: Michael R. Johns
Name: MICHAEL R. JOHNS
Title: CO-MANAGER

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Michael E. Johns, on behalf of BMR Properties, LLC, who acknowledge the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and notarial seal this 29th day of June, 2005.

My Commission Expires



Chad Walker
Notary Public

County of Residence

Chad T. Walker
Printed

CHAD T. WALKER, Notary Public
My Commission Expires August 15, 2010
County Of Marion In The State Of Indiana

This instrument prepared by Lante K. Earnest, TABBERT HAHN EARNEST & WEDDLE, LLP, One Indiana Square, Suite 1900, Indianapolis, Indiana 46204.

KEELER-WEBB ASSOCIATES

Consulting Engineers-Planners-Surveyors

486 GRADLE DRIVE - CARMEL, INDIANA 46032
PHONE (317) 574-0140 - FAX (317) 574-1269

15.00
2
11/20/06 NC

200600051568
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
08-31-2006 At 02:34 pm.
CERT CORR 15.00

CERTIFICATE OF CORRECTION

I, the undersigned, hereby certify that I prepared and certified the plat for Bainbridge Subdivision, which was recorded on September 10, 2004, as Instrument No. 200400083748, in Plat Cabinet 3, Slide 483, in the Office of the Recorder of Hamilton County, Indiana.

The purpose for filing this instrument is to correct errors and omissions to the Drainage and utility Easement at the rear of Lot 14, as shown on sheet 2 of 3 on the plat for Bainbridge Subdivision.

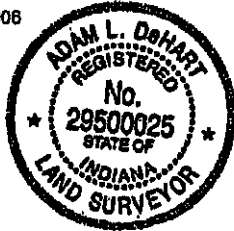
This instrument hereby corrects the following errors and omissions:

1. The Drainage and Utility Easement is now labeled as Variable Drainage and Utility Easement.
2. The Southwest corner of the easement is located 10.00 feet North 01° 27' 22" W of the 30' Landscaping Easement.
3. The Southeast corner of the easement is located 39.43 feet North 33° 24' 48" W of the 30' Landscaping Easement.

The above mentioned Variable Drainage and Utility Easement is hereby corrected and revised as shown on the attached exhibit 'A'.

Certified this 13th day of June, 2006
Keeler-Webb Associates

A. L. DeHart
A. L. DeHart, L.S.
Registration No. 29500025
State of Indiana



BEST POSSIBLE IMAGE
ALL PAGES

DULY ENTERED FOR TAXATION^b
Subject to final acceptance for transfer
31 day of August, 2006
Robin Mills Auditor of Hamilton County
Parcel # _____

"I affirm, under the penalties for perjury, that I have taken reasonable care to reflect each Social Security number in this document, unless required by law."

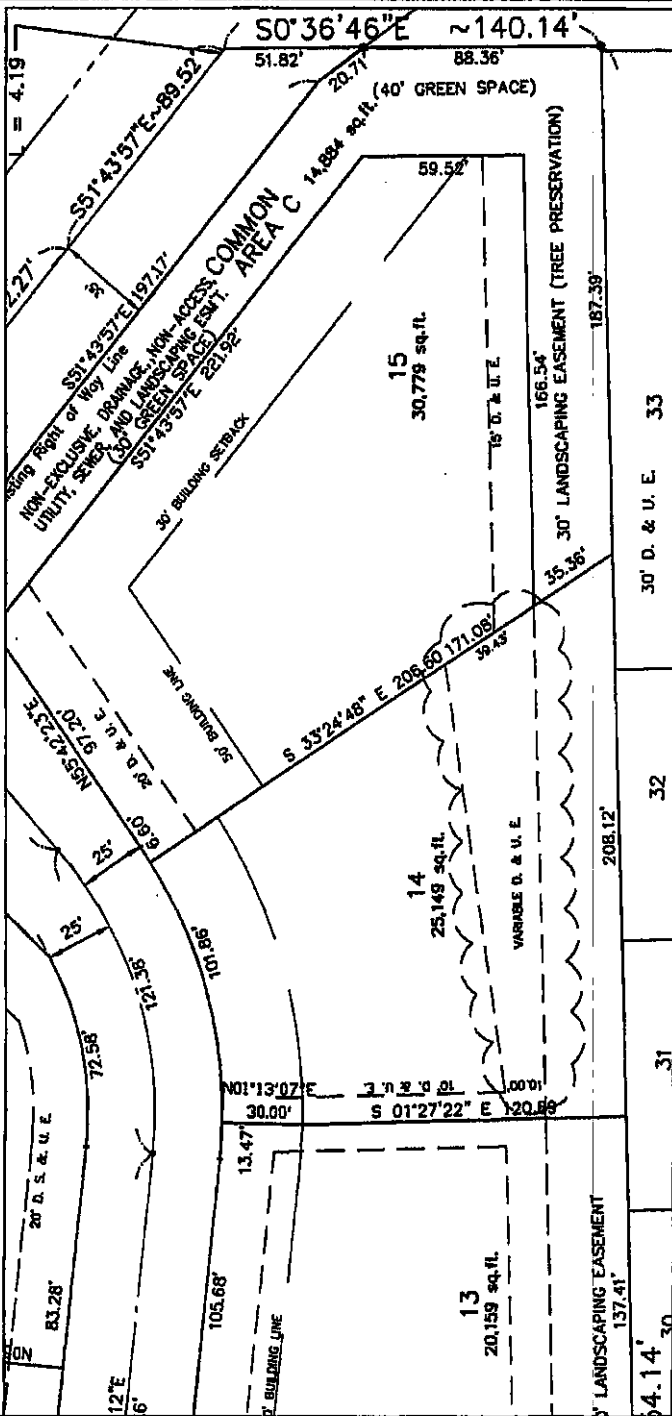
(name) *Adam L. DeHart*

This Certificate of Correction was prepared by A. L. DeHart.

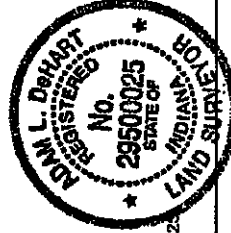
C:\My Documents\CORRECTION\0310-041_BMR-BAINBRIDGE-CERTIFICATE-CORRECTION.doc

LOT 14 BAINBRIDGE SUBDIVISION

EXHIBIT 'A'
CERTIFICATE OF CORRECTION



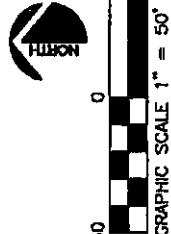
FOR RECORDED FINAL PLAT
THIS DOCUMENT IS REFERRED
TO IN INSTRUMENT No. 2004-00063748
RECORDED ON 9/10/2004
IN P.C. 3, SLIDE 463



Adam L. DeHart
Adam L. DeHart, L.S.
Registration No. 29500025
State of Indiana

FOR COVENANTS & RESTRICTIONS
THIS DOCUMENT IS REFERRED
TO IN INSTRUMENT No. 2004-00057461 WESTFIELD ORDINANCE # 03-42
RECORDED ON 8/16/2004

FOR ZONING ORDINANCE AND ANNEXATION
COMMITMENTS SEE INSTRUMENT #20040008890
TO IN INSTRUMENT No. 2004-00057461 WESTFIELD ORDINANCE # 03-42
RECORDED 2/10/2004



KEELER-WEBB ASSOCIATES
Consulting Engineers - Planners - Surveyors

488 GRADLE DRIVE
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FAX (317) 574-1289
E-mail: info@colorwebb.com
PROJ No. 0402-024

DRAWN BY: ALD
CHECKED BY: ALD
DATE: 6-13-06
SHEET No.
2 of 2