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FRANKLIN TOWNSHIP  
ASSESSOR

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**DECLARATION OF COVENANTS AND RESTRICTIONS ON  
THE BENTLEY ESTATES II OWNERSHIP**

THIS DECLARATION made this 9<sup>th</sup> day of January, 2001, by Community Development II, Inc. (DECLARANT) is the title owner of real estate (hereinafter called DECLARANT).

**WITNESSETH:**

- A. DECLARANT at the time of execution hereof is the sole owner in fee simple of real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A", which is incorporated herein by reference (hereinafter referred to as "TRACT" or "BENTLEY ESTATES II" or "BENTLEY ESTATES II SUBDIVISION").
- B. DECLARANT, by execution of this Declaration, assures that all properties which are conveyed which are a part of the "TRACT" shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the "TRACT" and be binding upon parties having right, title or interest in the "TRACT", or any, part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

**NOW, THEREFORE, DECLARANT hereby makes this Declaration as follows:**

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
  - (a) "APPLICABLE DATE" means the date determined pursuant to Paragraph 8 of this Declaration.
  - (b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
  - (c) 'Board of Directors' means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
  - (d) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.

MARTHA A. WOMACKS  
MARION COUNTY CLERK

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RECORDATION  
SUBJECT TO LITIGAL ACCEPTANCE  
FOR TRANSFER

- (e) "Common Expense" means expenses for the administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas or the Common Expense Areas and all sums lawfully assessed against the members of the Corporation
- (f) Common Area and/or Common Expense Area. The following appear as designated upon the Final Plat of the BENTLEY ESTATES II SUBDIVISION. A Common Area Designated "Common Area" 46,041 sq. ft. This area will be planted with trees and shrubs (in accordance with a Landscape Plan, submitted by Declarant to the Department of Metropolitan Development and subject to the Administrators approval) by Declarant before the Applicable Date. The maintenance of this Common Area and improvements is to be one of the "Common Expense Areas" and is further designated as General Common Area. The Corporation shall maintain the Common Area including fertilizing (2 per year) and mowing of the grass thereon when necessary, and the care, fertilizing, trimming, removal and replacement of trees and shrubs planted by the Declarant thereon without any duty to water such plantings and with trimming to be determined by the Board and not to exceed one trimming per year.

Fencing and Perimeter Landscaping

The Declarant proposes chain link Fencing at the south perimeter of the TRACT and wrought iron Fencing at the northwest corner of the Common Area; The HOA shall maintain the fencing and any complimentary landscaping as a common expense.

Entrance Wall and Aesthetic Landscaping

The Declarant proposes a subdivision identification sign tempered by some grass and/or landscaping in the Common Area, near the entrance to the BENTLEY ESTATES II Subdivision on Graber Way. The maintenance obligation for this sign and landscaping shall be an obligation of the Corporation.

MAINTENANCE RE: LOTS AND/OR DWELLING.

THE HOA SHALL HAVE NO OBLIGATION TO MAINTAIN THE LOTS AND/OR DWELLINGS AS EACH OF SUCH OBLIGATIONS ARE THE RESPONSIBILITY OF THE APPLICABLE LOT OWNER.

- (g) "Corporation" also known as HOA means the BENTLEY ESTATES II Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 8 of this Declaration; such Corporation being more particularly described in Paragraph 8 of this Declaration.
- (h) "DECLARANT" shall mean and refer to Community Development II, Inc. and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of DECLARANT hereunder including, but not limited to, any mortgagee acquiring title to any portion of the "TRACT" pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by DECLARANT.
- (i) "Dwelling Unit" shall refer to the single family residence on each separate Lot.
- (j) "Lot," means any plot of ground designated as such upon the recorded Final Plat of BENTLEY ESTATES II, and upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.
- (k) "Member" means a member of the Corporation.
- (l) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (m) "BENTLEY ESTATES II" or "BENTLEY ESTATES II Subdivision" means the name by which the TRACT, as described in Paragraph "A" above, which is the subject of this Declaration, shall be known.
- (n) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who owns the fee simple title to a Lot.

2. Declaration. DECLARANT hereby expressly declares that the "TRACT" shall be held, conveyed and transferred in accordance with the provisions of this Declaration.
3. Description of "BENTLEY ESTATES II". "BENTLEY ESTATES II" consists of 9 single family Lots, as designated on the Final Plat. The legal description for each lot in BENTLEY ESTATES II shall be as follows: Lot \_\_\_\_\_ in BENTLEY ESTATES II, a subdivision in Marion County, Indiana, as per plat thereof recorded \_\_\_\_\_ 2000, as Instrument No. \_\_\_\_\_ in the Office of the Recorder of Marion County, Indiana.
4. Ownership of Common Area. The Common Areas shown on the recorded plat of BENTLEY ESTATES II are subject to this Declaration and shall be conveyed to the "HOA" and thereafter owned by the Corporation and shall be held for the use and enjoyment of all the Members. While ownership of the Common Areas is in the HOA the maintenance of the Common Areas shall be the responsibility of the HOA. The Common Area rights shall pass with title to every Lot, subject to the provisions of this Declaration, including, but not limited to, the following:
  - (a) The right of the Corporation to control construction of improvements thereon.
  - (b) The right of the Corporation to suspend any Member from the right to use the Common Area for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.
  - (c) The right of the Corporation, upon approval by a written instrument signed by two-thirds (2/3rds) of all Class A Members, two-thirds (2/3rds) of all Class B Members, and by two-thirds (2/3rds) of all first mortgagees of record, with the Corporation per Item 16(a) hereof, to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such Common Areas purposes and subject to such conditions as may be agreed by the Corporation.
  - (d) The right of the Corporation to adopt such rules and regulations regarding the Common Areas and use thereof as it deems necessary as provided in Paragraph 19.

- (e) The Common Area made subject to this Declaration shall be conveyed by the DECLARANT and thereafter owned by the Corporation no later than when 80% of the Lots in BENTLEY ESTATES II have been transferred to a name other than the DECLARANT.
5. Delegation of Use of the Common Area Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area to members of his family, his tenants or contract purchasers who reside on any Lot.
6. Encroachments and Easements in Common Area If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area. Each Owner shall have an easement in common with each other Owner to use all pipes, air ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Area and serving his Dwelling Unit.
7. Easement for Utilities and Public and Quasi-Public Vehicles. An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephone and electricity on the "TRACT"; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by DECLARANT on the Plat or as thereafter may be approved by DECLARANT or by the Board of Directors. By Virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the "TRACT" and to affix and maintain electrical and telephone wires, circuits and conduits underground and across the "TRACT" within the easements shown on the Plat of BENTLEY ESTATES II. In the event any utility furnishing service should request a specific easement by a separate recordable document, DECLARANT shall have the right to grant such easement on such "TRACT", without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the "TRACT".

**8. Corporation; Membership; Voting; Functions.**

- (a) **Membership in Corporation.** DECLARANT and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.
- (b) **Voting Rights.** The Corporation shall have two (2) classes of membership, with the following voting Rights:
- (i) **Class A.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1), vote for such Lot which, vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (ii) **Class B.** Class B Members shall be DECLARANT and all successors and assigns of DECLARANT designated by DECLARANT as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to four (4) - votes for each Lot of which it is the Owner in all matters requiring a vote of the Members of the Corporation (Lots for this purpose include Lots reflected in a recorded plat. The Class B membership shall cease and terminate upon the APPLICABLE DATE, which shall be the first to occur:
1. the date upon which the written resignation of the Class B Members is delivered to the resident agent of the Corporation;
  2. thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or,
  3. five (5) years after date of recordation of this Declaration.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, and administration of the Common Area and Common Expense Area (Item 1 (f)) and to pay any other necessary expenses and costs in connection with these areas, and to perform such other functions as may be designated by it to perform under this Declaration.

9. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by DECLARANT as provided in subparagraph (b) of this Paragraph 9.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Mauri Young, David Bertolet and Richard Wyand (hereinafter referred to as the "Initial Board") all of whom have been or shall be appointed by DECLARANT. Notwithstanding anything to the contrary contained in, or any other provisions of this Declaration, the Articles or the By- Laws (a) the Initial Board shall hold office until the APPLICABLE DATE, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the APPLICABLE DATE, determined as provided above, every such vacancy shall be filled by a person appointed by DECLARANT, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type or juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed DECLARANT as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the APPLICABLE DATE determined as provided above, to exercise all of said Owner's right to vote, and to vote as DECLARANT determines, on all matters as to which Members of the Corporation are entitled to vote under

the Declaration, the Articles, the By-Law's or otherwise; provided, however, this right to vote granted to DECLARANT shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging the Common Areas titled in the HOA or merger/consolidation of the Corporation with another corporation. This appointment of DECLARANT as such Owner's agent attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by DECLARANT to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

- (c) Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.
- (d) Terms of Office and Vacancy. The Initial Board, per subparagraph (b) of this Paragraph, shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the APPLICABLE DATE provided herein. The Successor Board to the Initial Board shall be a minimum of three (3) in number. All Directors other than the Initial Board of Directors shall be Members of the Corporation at the time of their election to office and during their term of office as Directors. The Directors, other than the Initial Board of Directors shall be elected after the Applicable Date at the annual meeting of the Corporation by the Members. The first Board elected after the applicable date shall have one Director with a term of two (2) years with the other Directors' terms being one (1) year. The term of successor Directors



thereafter (other than vacancies) shall be two (2) years thus provided a staggering of terms and continuity of experience. Any vacancy of Director(s) prior to the annual meeting shall be filled by the remaining Directors. Any Director elected at an annual meeting to fill a vacancy shall serve for the unexpired term of the Director whose Vacancy is thus filled.

- (e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the Votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.
- (f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management maintenance, repair, upkeep and replacement as required and detailed under this Declaration within the Common Area and Common Expense Area (Item 1 (f)), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Other than the Initial Management under Paragraph 9 any decision thereafter to employ a professional property management agent shall require the prior consent of the Owners of at least fifty-one percent (51%) of the vote and fifty-one percent (51 %) of the vote of Mortgagees who are registered as hereinafter detailed. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection, surveillance of the Common Area and Common Expense Areas (Item 1(f)), unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
  - (ii) the duties delineated under Item 1(f) hereof;
  - (iii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
  - (iv) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
  - (v) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
  - (vi) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the Common Expense Areas (Item 1 (f)) and the business and affairs of the Corporation specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage, at any time during normal business hours;
  - (vii) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under the Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
  - (viii) paying any other necessary expenses and costs in connection with the duties in subsection (ii) hereof, and
  - (ix) to furnish, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (i) to employ a Managing Agent to assist the Board in performing its duties;
  - (ii) to purchase, lease or otherwise obtain for the Corporation to enable it to perform its functions and duties, such equipment,

- (iii) materials, labor and services as may be necessary in the judgment of the Board of Directors;
  - (iii) to employ legal counsel, architects, contractors, accountants and other as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
  - (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
  - (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
  - (vi) and to open and maintain a bank account or accounts in the name of the Corporation.
- (h) Limitation on Board Action. After the APPLICABLE DATE, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 (adjusted annually for increases or decreases in the Consumer Price Index) but in no event less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:
  - (i) contracts for replacing or restoring portions of the Common Area or Common Expense Areas (Item 1(f)) damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
  - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting-, and
  - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- (j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any, error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith, or gross negligence. The Corporation

shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

- (k) Additional Indemnity of Directors The Corporation shall indemnify, hold harmless, and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners, that such Director was not guilty of gross negligence or misconduct. In making such finding and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statement or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof, nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meeting of the Board of Directors.

- (l) Bond. The Board of Directors may provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to one (1) year aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.
10. Initial Management. The Board of Directors shall be deemed by the recordation of this Declaration to have entered into a management agreement with DECLARANT or with a corporation or other entity affiliated with DECLARANT or designated by DECLARANT for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days notice under which DECLARANT (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area of BENTLEY ESTATES II, and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or shall be subject to termination by, DECLARANT (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties

and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and DECLARANT (or such other corporation or entity as appropriate) is in effect DECLARANT (or such other corporation or entity as appropriate) shall have and DECLARANT hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Common Area of BENTLEY ESTATES II and perform all the functions of the Corporation.

11. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot and the Common Area. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the "TRACT" without a breakdown for each Lot and the Common Area, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the "TRACT" which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the "TRACT" and shall pay his proportionate share of the real estate taxes assessed on the improvements on the "TRACT" based upon the ratio that the square footage of all improved Lots.
12. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.
13. Maintenance of Common Area/Lots/Dwelling Units.
  - (a) Maintenance of Common Area. Maintenance of the Common Area, unless the same is otherwise the responsibility or duty of Owners of Lots shall be provided by the Corporation, however, this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board, or any Managing Agent must provide any on-site or roving guards, security service or security system.
  - (b) Maintenance of Individual Lots and Dwellings. Except as otherwise noted above, each owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to

the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the BENTLEY ESTATES II SUBDIVISION, the Corporation may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

- (c) Damage to or Abuse of Common Area or Areas to be Maintained by the Association under (b). If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations under (b), some maintenance or repairs is required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Corporation.

14. Architectural Control.

- (a) The Architectural Review Board ("Review Board"). As a standing committee of the Corporation there shall be, and hereby is, established an Architectural Review Board consisting of the Board of Directors of the HOA. Until the last Lot in BENTLEY ESTATES II is transferred from Declarant to another party, the Architectural Review Board shall be the Initial Board of Directors unless the Initial Board of Directors relinquishes its responsibility in writing to the HOA at an earlier date. The Successor Architectural Review Board to the Initial Board shall be appointed by the Initial Board of Directors at such time

as all planned lots in the TRACT hereof have been transferred by the Declarant to a titleholder other than Declarant

- (b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use and location of improvements on the Real Estate in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.
- (c) Conditions No improvements, alterations, repairs, excavation, changes in grade, or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the DECLARANT to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit or change in the Common Area or Common Expense Areas (Item 1 (f)), or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.
- (d) Procedures. In the event the Architectural Review Board fails to approve, modify, or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) has been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors, which may reverse or modify such decision by a two-thirds (2/3rds) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.
- (e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design of the Dwelling Units nor for maintaining the Common Area or Common



Expense Areas (Item 1(f)) without the prior written approval of 2/3rds of all Owners and 2/3rds of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

15. Assessments.

- (a) Annual Accounting. Annually after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by the accountant retained by the Board which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- (b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current 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 Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by following generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement of

the Common Area and Common Expense Areas (Item 1(f)), which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement for the Common Area (Item 1 (f)) shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget as a temporary budget.

- (c) Regular Assessment. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses on the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be raised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the

final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid as detailed in Item 16(e) hereof. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget, then:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid within thirty (30) days of written notice to said effect.
- (ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment of the Regular Assessment coming due, until the entire amount of such excess has been so credited.

The Regular Assessment for the current fiscal year of the corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from Payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 16 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final

budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. The Regular Assessments shall be due and payable automatically on its due date without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

- (d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3rd) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the DECLARANT shall not be any Owner's agent, attorney-in-fact, or proxy in this vote pursuant to the third sentence of Paragraph 7 of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.
- (e) Regular Assessments Prior to the APPLICABLE DATE. During the period that Dwelling Units are being constructed within the "TRACT", it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the APPLICABLE DATE to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the APPLICABLE DATE, the annual budget and all Regular Assessments and Special Assessments shall be

established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this subparagraph.

The Corporation may enter into a management agreement with DECLARANT (or a corporation or other entity designated by DECLARANT) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 9 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessment shall be paid by Owners to Management Agent. The Regular Assessment per owner will be One Hundred Twenty Dollars (\$120.00) per year, payable as hereafter detailed. The funds obtained by Regular Assessment are not intended to include, and do not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.

That portion of the Regular Assessment collected by DECLARANT prior to the APPLICABLE DATE applicable to any replacement reserve if any such reserve is created, shall be held by the initial Board, and if required, applied to the replacement required in the Common Area and Common Expense Items (Item 1(f)). To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the APPLICABLE DATE. Payment of Regular Assessment prior to the APPLICABLE DATE with respect to each Dwelling Unit (that is not owned by DECLARANT) shall commence on the date of conveyance by DECLARANT to such new owner. The first payment shall commence and be payable on the 1<sup>st</sup> day of the month following the date of conveyance and thereafter, payment of the Regular Assessment shall be paid the first day of each month. **DECLARANT SHALL NOT BE RESPONSIBLE FOR REGULAR ASSESSMENTS FOR LOTS OWNED BY DECLARANT PRIOR TO THE**

APPLICABLE DATE, but DECLARANT shall be responsible for any shortfall to cover common expenses prior to the Applicable Date.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 9 of this Declaration and to adhere to and abide by the same.

- (f) Failure of Owner to Pay Assessment. No Owner may exempt himself from paying regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area and/or Common Expense Areas (Item 1(f)) or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments. The Owner, and any occupant of the Lot and/or Dwelling Unit, shall be jointly and severally liable for the payment to the Corporation and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and/or Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise,

the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and/or Dwelling Unit costs and expenses of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessment were due until paid at the rate equal to the prime interest rate then being charged by Bank One in Indianapolis to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another National Bank in Marion County, Indiana selected by the Board of Directors). The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage.

- (g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and/or Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessment thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

16. Mortgages.

- (a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such

Mortgage and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws or a proxy granted to such Mortgagee in connection with the mortgage, or otherwise. The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof
- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation (1) to pay any charges against the Common Area and Common Expense Areas (Item 1 (f)) which are in default and (2) to pay any overdue premiums on hazard



insurance for the above areas or to secure new hazard insurance for the above areas on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

- (d) Notice of Condemnation or Casualty Loss Mortgagee shall be timely notified of any condemnation loss which affects a material portion of the "TRACT". Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.
- (e) Notice to Insurers and Guarantors Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

17. Insurance.

- (a) Casualty insurance The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring, if possible and practical, the Corporation's improvements within the Common Area (Item 1 (f)) in an amount consonant with the full replacement value of these improvements. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth, shall be paid to it or to the Board of Directors who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds

obtained by the Board of Directors concerning the officers of the Corporation as provided in the By- Laws shall specifically include protection for any insurance proceeds so received.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall otherwise be solely responsible for loss or damage to his Dwelling Unit, the contents of his dwelling Unit and Lot however caused and his personal property stored elsewhere on the "TRACT" and the Corporation shall have no liability to the Owner for loss or damage to the Dwelling Unit the contents of any Dwelling Unit or any personal property stored elsewhere on the "TRACT". Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

- (b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive Public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the "TRACT". Such Public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the

Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law maintained including, but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors, the proceeds of which are payable to the Board or the Corporation.

(d) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

18. Restoration of Common Areas and/or Common Expense Areas (Item 1(f)) ("Improvements"). In the event of damage to or destruction of any of the "Improvements" herein titled due to fire or any other casualty or disaster, the Corporation shall attempt to promptly cause the same to be repaired and reconstructed to the extent of proceeds of insurance and other funds available but without making the HOA insolvent. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the "Improvements", or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the "Improvements" so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed

against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the "Improvements" to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

19. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units, Common Areas and Common Expense Areas (Item 1 (f)) shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by an Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes
- (b) No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Areas and/or Common Expense Areas (Item 1(f)) which shall result in a cancellation of insurance or increase in insurance because of any such action, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be permitted in any Dwelling Unit, the Common Areas and/or Common Expense Areas (Item 1 (f)) or on any Lot. The Board of Directors determination as to what is a nuisance shall be conclusive.

- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Areas and/or Common Expense Areas (Item 1 (f)) except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit (unless otherwise stated herein), provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Customary household pet does not include pot-bellied or midget pigs or hogs, exotic animals and/or other animals that would normally be considered livestock or zoo animals. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an owner shall be fully liable for any injury or damage to persons or property, including the Common Areas and/or Common Expense Areas (Item 1(f)) caused by his pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the "TRACT" within ten (10) days after written notice from the Board to the respective Owner to do so.
- (f) The Common Areas and Common Expense Areas (Item 1(f)) shall be kept free and clear of rubbish, debris and other unsightly materials.
- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the 'TRACT'.
- (h) No "for sale", "for rent" or "for lease" signs, or other signs (other than customary realtor signs), or other window or advertising display shall be maintained or permitted on any part of the "TRACT", and Lot or any Dwelling

Unit without the prior consent of the Board; provided, however, that the right is reserved by the DECLARANT and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the "TRACT" in connection with any unsold or unoccupied Lots and Dwelling Units.

- (i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas and/or Common Expense Areas (Item 1 (f)).
- (j) The use of the Common Area shall be according to published Rules and Regulations.
- (k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area and/or Common Expense Areas (Item 1 (f)), except with express permission from the Board.
- (l) The Common Areas and Common Expense Areas (Item 1(f)) shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.
- (m) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.
- (n) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.
- (o) A motor vehicle that is inoperative or unlicensed and not being used for normal transportation is not permitted to remain on any Lot outside of the attached garage.
- (p) References by incorporation, is made to the information contained in the Plat of this Subdivision, which includes, house size, exterior dwelling material,

number and garages, driveway requirements and other development standards for improvements on each Lot.

Notwithstanding anything to the contrary contained herein or in the Articles or By Laws including, but not limited to, any covenants and restrictions set forth herein or otherwise, DECLARANT shall have the right to use and maintain any Lots and Dwelling Units owned by DECLARANT and other portions of the "TRACT" (other than individual Dwelling Units and Lots owned by persons other than DECLARANT), all of such number and size and at such locations as DECLARANT in its sole discretion may determine, as DECLARANT may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. DECLARANT shall have the right to relocate any or all of the same from time to time, as it desires. DECLARANT shall have the right to remove the same from the "TRACT" at any time.

20. Amendment of Declaration.

- (a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:
  - (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 of 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.
  - (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less a majority in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee of record with the Corporation per Item 16(e) hereof 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.

- (v) Special Amendments No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 17 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation or (3) the provisions of Paragraph 18 of this Declaration with respect to reconstruction or repair of the Common Areas and Common Expense Areas (Item 1(f)) in the event of fire or any other casualty or disaster, or (4) the provision of Paragraph 14 of this Declaration establishing the Architectural Review Board and providing for its functions, 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.
  - (vi) Additional Special Amendments No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for, and responsibility for, maintenance, repair and replace of the Common Areas and Common Expense Areas, or (3) right to use the Common Areas and Common Expense Areas, or (4) termination of the applicability of this Declaration or (5) any provisions which are for the express benefit of Mortgagees without the consent of at least two-thirds (2/3rds) of the votes of the Owners for the first ten (10) years after recording of this Declaration and thereafter at least a majority of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages whose mortgage interest have been made known to the Board of Directors as heretofore detailed.
  - (vii) Recording Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
  - (viii) Failure of Mortgagee to Respond Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.
- (b) Amendments by DECLARANT ONLY Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the DECLARANT shall have and hereby reserves the right and power, acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal



National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other government agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (e) adopt amendments prior to the APPLICABLE DATE, which are not materially adverse to the owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the DECLARANT to vote in favor of, make, or consent to any amendments described in this Paragraph 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 DECLARANT to vote in favor of, make, execute and record any such amendments. The right of the DECLARANT to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the DECLARANT no longer holds or controls title to any part or portion of the "TRACT".

(c) Amendment Prior to the APPLICABLE DATE. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the APPLICABLE DATE without the consent and approval of DECLARANT.

21. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By - Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of

Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or "TRACT" as though such provisions were recited and stipulated at length in each and every deed, conveyance mortgage or lease thereof. All persons, corporation, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the "TRACT" in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

22. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his misuse of the Common Areas and/or Common Expense Areas.
23. Costs and Attorneys Fee. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.
24. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and/or Common Expense Areas or by abandonment of his Lot
25. Severability Clause. The invalidity of any covenants, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or

affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

- 26. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.
- 27. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.
- 28. The Plat. The Final Plat of the portions of the "TRACT" detailed in Item 3 hereof is incorporated into this Declaration by reference to the Instrument number thereof, filed in the Office of the Recorder of Marion County, Indiana.

**IN WITNESS WHEREOF**, the undersigned has caused this Declaration to be executed the day and year first above written.

"DECLARANT FEE OWNERS"  
OF EXHIBIT "A" REALTY  
COMMUNITY DEVELOPMENT II, INC.

STATE OF INDIANA     )  
                                  )  
COUNTY OF HAMILTON )

By: Mauri G. Young  
Mauri G. Young  
Capacity: President

Before me, a Notary Public, in and for said County and State, personally appeared Mauri G. Young, by me known, and by me known to be the President of Community Development II, Inc., who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of BENTLEY ESTATES II OWNERSHIP" on behalf of said Corporation

WITNESS my hand and Notarial Seal this 9<sup>th</sup> day of JANUARY, 2001

My Commission Expires: 3-30-2007

[Signature]  
Notary Public

County of Residence: HANCOCK

JOHN R. MAREN  
(Printed)

39 LM

**DECLARATION OF COVENANTS AND  
RESTRICTIONS OF THE BENTLEY ESTATES II COMMUNITY**

BEING RE-RECORDED  
TO CORRECT INSTRUMENT  
# 2001-487

MARTHA A WYVACKS

97037 OCT 29 8

EXEMPT FROM RECORDATION  
SUBJECT TO FINAL COMPLIANCE  
FOR TRANSFER

RECORDED FOR TRANSFER

104158 DEC 18 8

MARTHA A WYVACKS

Inst # 2003-0269593  
10/29/03 01:57 PM MARBA MARTIN MARION CTY RECORDER LM 86.00 PAGES: 39

**FILED**  
OCT 24 2003  
FRANKLIN TOWNSHIP  
ASSESSOR



10/29/03 01:57 PM MARBA MARTIN MARION CTY RECORDER CAM 86.00 PAGES: 29

~~Inst # 2003-0233519~~

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**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
THE BENTLEY ESTATES II "COMMUNITY"**

This Declaration of Covenants and Restrictions of the Bentley Estates II "Community" ("Declaration") is made this 21<sup>st</sup> day of October, 2003, by Community Development II, Inc. (the "Declarant").

**WITNESSETH:**

**(RECITALS)**

WHEREAS, Declarant is the Owner of real estate in Marion County, State of Indiana, more particularly described in Exhibit "A" attached and made a part hereof with Exhibit "A" comprised of approximately 6.255 acres to be known as Bentley Estates II and also designated as the "Tract" and "Real Estate" in this Declaration.

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, with the possibility of identification signage and complimentary landscaping at the entranceway and fencing on certain of the perimeters for the benefit of such residential community, to be known as "the Bentley Estates II Subdivision" (Exhibit "A" realty);

WHEREAS, Declarant desires to provide subject to this Declaration a common interest community which addresses commonly owned real estate, their maintenance and other maintenance obligations and the finances to honor these and other community obligations. To this end, Declarant desires to subject the Tract to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Tract and each Owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, to accomplish these tasks in said Tract, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas and maintenance expense areas detailed in the Tract, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the common interest of the Owners of the Tract, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the Indiana Code 23-17-1, et seq., under the name "Bentley Estates II Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions:

NOW THEREFORE, Declarant, as Owner of the Tract hereby declares that the Exhibit "A" Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth.

## RECITALS

The Recitals are incorporated herein as if set out in full.

### **ARTICLE I Definitions**

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

(a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;

(b) "Applicable Date" or "Turnover Date" shall mean and refer to the date determined pursuant to Article III of this Declaration; and refers to the time at which the Declarant relinquishes control of the governance of the Association as detailed on Article III;

(c) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;

(d) "Association" (HOA) shall mean and refer to Bentley Estates II Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, et seq., which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;

(e) "Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided for in the Articles, Bylaws and this Declaration;

(f) "Bylaws" shall mean and refer to the Code of Bylaws of the Association, as the same may be amended from time to time;

(g) "Committee" shall mean and refer to the "Bentley Estates II Architectural Control Committee", the same being the committee or entity established pursuant to Article VIII, of this Declaration for the purposes therein stated;

#### Special Note

Some of this subparagraph is a direct result and is impacted upon by the Assurances found in the "Final Development Statement" filed on September 23, 1999 in zoning Cause No. 99Z145 (99DP19) (hereinafter referred to as "Final Development Statement") which is attached hereto for informational purposes only and not subject to amendment under Article XV hereof.



(h) "Common Area" consisting of the strip of ground between Mathews Road and Graber Way denominated by such title on the recorded plat of this community which will ultimately be transferred in legal title to the HOA by the Declarant and thereafter be commonly owned by the HOA Members;

The HOA at all times herein has rights as respects the common area to regulate the use thereof, to make and/or remove improvements thereon, including but not limited to possible identification signage and complimentary landscaping and possible utilities and other landscape treatment within this common area thereto with the attendant responsibility to care for and maintain same.

The Declarant expects to convey legal title to Common Areas to the HOA as soon after the Applicable Date as any mortgage thereon is satisfied in full but reserves the right to transfer such title earlier in Declarant's sole discretion. The Board, after the initial Board is replaced, is empowered to accept title subject to a mortgage of it is satisfied with assurances of payment thereof by Declarant.

(i) "Common Expenses" shall refer to expenses of administration of the HOA and for their exercised rights and obligations detailed in the Definitions "Common Areas" and maintenance Expense Areas and shall also include the HOA obligations as respects Lot maintenance in Article VI herein;

Fifty percent (50%) of the cost of counsel expenses to create this Declaration and The Bentley Estates II Homeowners Association, including, but not limited to, Articles of Incorporation, By-Laws, Secretary of State file fee and initial minutes.

(j) "Community or Project" refers to the Bentley Estates II area as depicted on the recorded plat, a copy of which is attached as Exhibit B;

(k) "Declarant"/"Developer" shall mean and refer to Community Development II, Inc., an Indiana corporation, and any successors and assigns of Community Development II, Inc. whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title, to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

(l) "Dwelling Unit" shall refer to a single freestanding residential structure on an individual or multiple lots;

(m) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Bentley Estates II, and upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used, it shall be deemed to include the Dwelling Unit, if any, located thereon;

(n) "Maintenance Expense Areas." As a consequence thereof, easements may have been created on the recorded plat that reserve to the HOA certain rights and responsibilities.

Illustrative of same is the care and maintenance for landscaping, fencing and signage in such areas, including but not limited to identification signage in the Bentley Commons Drive and Graber Way intersection in the common area parcel and fencing around certain perimeters of this subdivision. Since this fencing may be on the property line of an adjoining subdivision with its own HOA, title should be held in common with the maintenance of the side of the fencing facing a subdivision being that subdivision's maintenance obligation. The cost of any such care, replacement, and maintenance including the subdivision's side of any such fencing shall be included in the definitions of "Common Expenses."

- (o) "Member" means a Member of the Association;
- (p) "Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (q) "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;
- (r) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (s) "Properties" shall mean and refer to the real property described in Exhibit A attached hereto;
- (t) "Real Estate" shall mean and refer to the parcel of real estate in Marion County, Indiana, described in Exhibit A attached to this Declaration and subject thereto, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;

The description of "Bentley Estates II", consists of nine (9) Lots numbered 1 through 9 inclusive. Consequently, the legal description for each Lot in this subdivision shall be as follows:

Lot \_\_\_\_ in Bentley Estates II, a subdivision in Marion County, Indiana, as per plat thereof, recorded January 9, 2000 as Instrument #000004207 in the Office of the Recorder of Marion County, Indiana.

- (u) "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time (see Article IX and Exhibit C referred to therein);
- (v) "Rules and Regulations" – rules and regulations relative to the use, occupancy, operation and enjoyment of the Real Estate and the Common Areas and the Controlled Tree Preservation Easements;

(w) "Tract" the Exhibit A real estate which is made subject to this Declaration.

**Section 2.** Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

## **ARTICLE II Declaration**

**Section 1. Declaration.** Declarant hereby expressly declares that the Tract shall be held, transferred, and occupied subject to the Restrictions as Covenants running with the Real Estate. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Committee and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the Committee, the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

## **ARTICLE III Association; Membership; Voting; Functions**

**Section 1. Membership in Association.** Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association.

**Section 2. Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

(a) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a

particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the By Laws if such determination is unavailable, but in no event shall more than one (1) vote be cast with respect to any such Lot. Otherwise, in the absence of a determination of multiple Owners, the vote shall be equally split between the multiple Owners. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one (1) vote.

(b) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner on the recorded subdivision plat of the Real Estate (which is one and the same as the Lot configuration on the recorded plat [Exhibit B]) on all matters requiring a vote of the Members of the Association. THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF

(i) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION, OR

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE CLASS A VOTES EQUAL THE CLASS B VOTES.

(iii) TEN (10) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

THE DATE APPLICABLE TO THE ABOVE IS HEREINAFTER REFERRED TO AS THE APPLICABLE DATE.

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one, (1) Class A membership for each Lot owned.

**Section 3. Functions.** The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation of the Article VII matters and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

#### **ARTICLE IV Board of Directors**

**Section 1. Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a Member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by Declarant as provided in Section 2 of this Article IV.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: David Bertolet, David Baird, George Weidman, Chad Young and John Murdock (herein referred to as the "Initial Board"), who has been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the Members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a Member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original Member thereof or as a Member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special Member of the Association and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

**Section 3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 4. Term of Office, Vacancy, and Number of Directors after the Applicable Date.**

(a) Term. Subject to the provisions of Section 2 of this Article IV, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each Member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

(b) Number of Directors after Applicable Date. The number of Directors to serve on the Board after the Applicable Date shall be a minimum of three (3).

(c) Vacancies. Subject to the provisions of Section 2 of this Article IV as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article IV. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 5. Removal of Directors.** A Director or Directors, except the Members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

(b) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

(c) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

(d) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(e) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;

(f) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(g) paying any other necessary expenses and costs in connection with the Common Areas; and

(h) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws, or the Act.

**Section 7. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These power include, but are not limited to, the power:

(a) to employ a Managing Agent to assist the Board in performing its duties;

(b) to purchase, lease, or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors.

(c) to employ legal counsel, architects, Contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

(e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Association;

(g) to promulgate, adopt, revise, amend and alter from time to time such additional Rules and Regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) including but not limited to charging uniform fees for the use of Common Areas and to set and charge fees for late payment of assessments and fines for violations of Restrictions and Covenants and Rules and Regulations as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and

(h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, and Dwelling Units and

Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service, provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

(i) shall have the right to convey title of Common Area to Lot Owners to correct any overlaps or encroachments.

(i) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

**Section 8. Limitation on Board Action.** After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary;

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 9. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 10. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 11. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any



appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 12. Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**Section 13. Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

## **ARTICLE V**

### **Real Estate Taxes; Utilities**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit including utilities (if any) to community identification signage shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**ARTICLE VI**  
**Encroachments and Easements in Common Areas**

If by reason of inexactness of construction, settling after construction, or for any other reasons, any Common Areas encroach on any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Areas.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Areas and serving his Dwelling Unit

**ARTICLE VII**  
**Maintenance of Common Areas/Lots/Dwelling Units**

**Section 1. Maintenance of Common Area.** Maintenance of the Common Area, unless the same is otherwise the responsibility or duty of Owners of Lots shall be provided by the Corporation, however, this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system.

**Section 2. Maintenance of Individual Lots.** Except as otherwise noted, each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition with an exterior appearance up to the general standards of the Bentley Estates II Subdivision, the Corporation may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property in like manner to liens created for Assessments hereunder. Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

**Section 3. Damage to or Abuse of Common Area.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations and some maintenance or repairs are required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien in like manner to the lien under Assessments may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Corporation.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items, including, but not limited to, access to any easements reserved, granted or created by any Bentley Estates II subdivision plat or of any portion of the Real Estate for such purposes including the easement for a possible stub street at the west property line of the Real Estate.

## **ARTICLE VIII Architectural Standards**

Nothing, including any fence, deck, retaining walls, recreational equipment (including basketball goals), or any structure, storage shed, doghouse or other improvements, 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 Committee has been obtained pursuant to Section 1 below.

THIS ARTICLE SHALL NOT APPLY TO THE ACTIVITIES OF THE DECLARANT, NOR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS BY OR ON BEHALF OF THE ASSOCIATION.

THIS ARTICLE MAY NOT BE AMENDED WITHOUT THE DECLARANT'S WRITTEN CONSENT SO LONG AS THE DECLARANT OWNS ANY LAND SUBJECT TO THIS DECLARATION.

**Section 1. Architectural Control Committee.** There shall be, and hereby is, created and established the "Bentley Estates II Architectural Control Committee" ("Committee") which shall have exclusive jurisdiction over all construction on any portion of the Properties. UNTIL 100% OF THE PROPERTIES HAVE BEEN DEVELOPED AND CONVEYED TO PURCHASERS in the normal course of development and sale, the DECLARANT, or not more than five, nor less than three, persons designated by it, SHALL CONSTITUTE THE COMMITTEE AND SHALL SERVE AT THE DISCRETION OF THE DECLARANT. THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DECLARANT. After the sale of 100% of the Properties, the Committee shall be a standing committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

**Section 2. Approval Process.** The Committee has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines, and application and review procedures. Copies are on file in the office of the Declarant (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Committee 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, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners and builders shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee.

**Section 3. Power of Disapproval.** The Committee may refuse to grant permission to construct, place, or make the requested improvement, when:

(a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Committee;

(b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or

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

**Section 4. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within fifteen (15) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. In the event that the Committee fails to provide written notice of approval or to request written notice for additional information within 45 days after submission of all required or requested information, the plans shall be deemed and presumed denied.

**Section 5. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications 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 6. Variance.** The Committee 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 applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Committee shall not be considered hardships warranting a variance.

**Section 7. Compliance with Guidelines.** Any 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 Committee may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by Declarant or the Association.

**Section 8. Non-Liability of Declarant, Committee.** Neither the Declarant nor the Committee shall be responsible in any way for any defect in any plans, specifications, or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee or the Declarant does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

**Section 9. Inspection.** The Committee and the Declarant may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the Committee, nor any Member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

**Section 10. No Compensation.** Neither the Committee nor any of its Members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

**ARTICLE IX**  
**Use Restrictions/Covenants and Regulations**

The following covenants and restrictions contained in Exhibit C attached and made a part hereof concerning the use and enjoyment of the Lots, Dwelling Units, Common Areas (Item 1(h)) and Common Expenses (Article 1(i)) are in addition to any other covenants or restrictions contained herein and in the Final Plat of Bentley Estates II. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and are enforceable by an Owner, or by the Association. In addition to any other remedies herein provided, present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees, but there shall be no right or reversion or forfeiture resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant in and on the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. Declarant shall have the right to remove the same from the Real Estate and Additional Property at any time.

**ARTICLE X**  
**Assessments**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next

ensuing fiscal year. At such annual or special 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 eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments, and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks: or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and one hundred ten percent (110 %) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot, provided, immediately following the adoption of the annual budget, each Owner shall be given notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in annual installments payable in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Payment of the Regular Assessment, whether in one payment or in any other manner, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

(a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited: provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner or the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfer his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. The initial Regular Assessment is \$300.00 per year (based on and proratable at \$25.00 per month) payable in advance.

(c) THE DECLARANT AND JDC FINE HOMES, INC., SO LONG AS THE LATER REMAINS THE EXCLUSIVE BUILDER IN BENTLEY ESTATES II, SHALL NOT BE OBLIGATED FOR REGULAR ASSESSMENT. THE DECLARANT AND THE REFERENCED EXCLUSIVE BUILDER AFTER THE APPLICABLE DATE WILL CONTRIBUTE TWENTY-FIVE PERCENT (25%) OF THE REGULAR ASSESSMENT FOR UNIMPROVED LOTS OR FOR IMPROVED LOTS NOT YET READY FOR OCCUPANCY IN DECLARANT'S NAME OR SAID EXCLUSIVE BUILDER'S NAME, BUT ONLY IF THE APPLICABLE DATE IS NOT EARLIER THAN WHEN DECLARANT AND THE SAID



EXCLUSIVE BUILDER HAS CONVEYED EIGHTY PERCENT (80%) OF THE LOTS ON EXHIBIT B TO OTHERS OR TEN (10) YEARS AFTER THE DATE THIS DECLARATION HAS BEEN RECORDED, WHICHEVER FIRST OCCURS.

**Section 4. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, but not on Lots owned by Declarant, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration. THE DECLARANT SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT SPECIFICALLY AGREES OTHERWISE IN WRITING.

**Section 5. Failure of Owner to Pay Assessments.**

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Maintenance Expense Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and special assessments should constitute a lien against the Lots and Dwelling Units thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mechanic's lien on real property and enforced in like manner as mechanic liens. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due,

until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by Bank One or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board) plus 4% but in no event more than the maximum rate allowable under applicable usury laws.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

(c) In addition to the remedies above stated for failure to pay assessments, the Association may disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessment are delinquent in addition to charging a late fee of \$5.00 per day of delinquency to among other things, cover the administrative expense of addressing the delinquency and also deny such Member the use of the Common Areas for a period not exceeding 60 days for each separate non-payment.

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article IV hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments. Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or Charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, except as specifically detailed in the last paragraph of subsection 3 herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to another Person, and a prorated portion of the Regular Assessment for the

balance of the fiscal year of the Association against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

**Section 7. Initial Working Capital and Start-Up Fund.** Upon the closing of the initial conveyance of each Lot by Declarant to another Person, the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working, capital and start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Regular Assessment against such Lot, which payment shall be nonrefundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

## **ARTICLE XI**

### **Mortgages**

**Section 1. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon written request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

**Section 2. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article X hereof.

**ARTICLE XII**  
**Insurance**

Preface

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE (INSURANCE), THE ASSOCIATION WILL SEEK TO OBTAIN THE COVERAGES INDICATED SUBJECT HOWEVER TO THE LIMITATION OF WHAT'S AVAILABLE FROM INSURANCE CARRIERS FOR BENTLEY ESTATES II COUPLED WITH CONSIDERATION AS TO EXCEPTIONS AND EXCLUSIONS OF COVERAGE, AND DEDUCTIBLES TO MAINTAIN CONTROL OF THIS ITEM OF COMMON EXPENSE.

THE ASSOCIATION WELCOMES THE OWNERS' INPUT REGARDING THE BEST COVERAGE FOR THE BEST PRICE AND WILL SUPPLY OWNERS WITH A SUMMARY FROM THE ASSOCIATION'S INSURANCE PROFESSIONAL WHICH WE URGE OWNERS TO SHARE AND CHALLENGE THEIR OWN INSURANCE PROFESSIONAL FOR RECOMMENDATIONS AS TO THEIR REQUIRED INSURANCE AND ANY ADVISABLE ADDITIONAL COVERAGE (GAP OR OTHERWISE) FOR DIRECT PURCHASE BY OWNERS.

**Section 1. Casualty Insurance.** The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the

Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees. Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

**Section 2. Public Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Association, the Board of Directors, Officers, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

**Section 3. Other Insurance.** The Association shall also obtain any other insurance required by law to be maintained, including but not limited to either direct workmen's compensation coverage or certificate of such coverage and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors, and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the Members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

**Section 5. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

### **ARTICLE XIII Casualty and Restoration**

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of these areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing these areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas and/or maintenance expense areas (if any) to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the

damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

#### **ARTICLE XIV Amendment of Declaration**

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **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.

(b) **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.

(c) **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 Bylaws.

(d) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70% in the aggregate of the votes of all Owners). In the event any Lot or Dwelling Unit 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.

(e) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XII of this Declaration with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Article XIII of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if Declarant records the modification in the Office of the Recorder of Marion County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future Perform) function similar to those performed by such agencies or entities, to subject additional property to these restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 or 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 acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

## **ARTICLE XV**

### **Acceptance and Ratification**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The



acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended, or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

## **ARTICLE XVI**

### **Negligence**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

## **ARTICLE XVII**

### **Benefit and Enforcement**

**Section 1. Covenants Appurtenant to Land.** These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then Owners of the Lots in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that an instrument to that effect signed by the Lot Owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

**Section 2. Prosecution of Violations.** It shall be lawful for the Association, the Committee (as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these

covenants and restrictions shall be the financial responsibility of the Lot Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then Owners of the Lots in this subdivision.

The Association may as respects an Owner who violates these restrictions and/or Rules and Regulations, after written notice to the Owner detailing the nature of the violation with a time period established by the Association to cure or conform, disqualify the voting rights and right to hold office while the violation continues and may further in the Board's sole discretion, impose a fine, in whole or in part, with each day after the cure period being a separate violation at a chargeable rate of up to one hundred dollars (\$100.00) per violation per day. This fine, if not paid when required, will be processed in the same manner as assessments.

**ARTICLE XVIII**  
**Non-Liability of Marion County Drainage Authority**

The Marion County Drainage Authority shall not be responsible in any way for, and disclaims any liability for, any defect in any plans, specifications or other materials approved by it in connection with the storm drainage system for Bentley Estates II Community, or for any defects in the construction thereof.

**ARTICLE XIX**  
**Miscellaneous**

**Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

**Section 2. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

**Section 3. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law.

**Section 4. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 6. Delegation of Use of the Common Areas.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Areas to members of his family, his tenants or contract purchasers who reside on any Lot

**Section 7. The Plat.** The Final Plat of the Exhibit A realty of Bentley Estates II, that is the Tract in this Declaration, has been recorded as Instrument #00000427 in the Office of the Recorder of Marion County, Indiana.

2001-004297

IN WITNESS WHEREOF, Community Development II, Inc., by its duly authorized President, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

Community Development II, Inc.

By: David G. Bertolet, President  
David G. Bertolet, President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for said County and State, personally appeared Mauri Young, the President of Community Development II, Inc., who acknowledged the execution of the above and foregoing instrument for and on behalf of said corporation, and, who having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 21<sup>st</sup> day of October, 2003.

My Commission Expires:

Aug 12, 2010

Amy R. Gearlds  
Notary Public

Printed Amy R. Gearlds

Resident of Marion County



**Consent and Acknowledgement**

The undersigned, JDC Fine Homes, Inc., has contractual interest to purchase all of the nine (9) lots in Bentley Estates II from the present Declarant Community Development II, Inc., and under such contract, has agreed, starting September 9, 2003, to cover the "common expenses" and any "short fall" necessary to cover such expenses, all of which are detailed in the Declaration of Covenants and Restrictions of Bentley Estates II. The parties agree that at such time as JDC Fine Homes, Inc. secures legal title to all nine (9) of the lots in Bentley Estates II, JDC Fine Homes, Inc. shall become the Successor Declarant under this Declaration.

**Community Development II, Inc.**

**JDC Fine Homes, Inc.**

By: David Bertolet, President  
David Bertolet, President

John Murdock, President  
John Murdock, President

Dated 10/21/03

Dated 10/21/03

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for said County and State, personally appeared David Bertolet, President of Community Development II, Inc., and John Murdock, President of JDC Fine Homes, Inc., who acknowledged the execution of the above and foregoing Consent and Acknowledgement, and, who having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 21<sup>st</sup> day of October, 2003.

My Commission Expires:

Aug 12, 2010

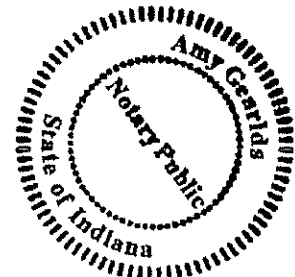
Amy R. Gearlds  
Notary Public

Printed Amy R. Gearlds

Resident of Marion County

This instrument was prepared by:

Raymond Good  
LOCKE REYNOLDS LLP  
201 North Illinois Street, Suite 1000  
P.O. Box 44961  
Indianapolis, IN 46244-0961  
(317) 237-3800



## EXHIBIT C

### Bentley Estates II Covenants and Restrictions

The words defined in the Declaration of Covenants and Restrictions for Bentley Estates II are likewise defined herein.

**Section 1. Declarant's and the Association's Right to Perform Certain Maintenance and Removal.** In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure, situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be reasonably necessary, to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof to the Declarant or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Association, nor any of its agents, employees or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

**Section 2. Ditches and Swales and Erosion Control.** It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

**Section 3. Drilling.** No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

**Section 4. Ground Elevations and Erosion Control.** It shall be the Lot Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control as finally required and approved by the Marion County Drainage Board and the Department of Planning and Zoning as evidenced upon the final construction plans for the development of this subdivision.

**Section 5. Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of

the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

**Section 6. Landscape Easements.** There are strips and areas of ground shown titled as various easements on the Final Plat for the Real Estate which are hereby reserved for the use of owners of lots to the extent and limited for the purposes set forth in the Declaration and for the use of Declarant and Association for the installation, maintenance, repair and replacement of the matters detailed in Item 1(i) requiring maintenance. Except as installed and maintained by lot owners, pursuant to the requirements of the Declarations, or by Declarant and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the Declarant and approved by the Committee) shall be erected or maintained on said strips and areas by the owner of any lot subject to any such "Landscape Easement", and the owners of such lots affected by any such "Landscape Easement" shall take and hold title to their lots subject to the foregoing rights of the Declarant and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the Declarant or Association in any such "Landscape Easement". The foregoing grant of rights to the Declarant shall not impose an obligation on the Declarant to undertake such maintenance unless it elects to do so.

**Section 7. Maintenance of Lots and Improvements.** It shall be the responsibility of each Owner to prevent the occurrence of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the forgoing, 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 Properties. No waste shall be committed in any Dwelling or on any Lot. Each Owner shall:

- (i) Remove all debris or rubbish;
- (ii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iii) Cut down and remove dead trees;
- (iv) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**Section 8. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties, however, if an

Occupancy Permit from government is involved the issuance thereof shall be deemed substantial completion.

**Section 9. Occupants Bound.** All provisions of the Declaration, Bylaws 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 Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws 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, Bylaws and rules and regulations adopted pursuant thereto.

**Section 10. Prohibition of Used Structures.** All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

**Section 11. Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage or 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 Properties 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 Properties. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other machines or equipment. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties. Also, excessive grass clippings from the mowing of lawns or other lawn/tree rubbish will not be allowed to be left on any street within the development.

**Section 12. Residential Use.** The Properties shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Properties at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

**Section 13. Sidewalks.** Sidewalks shall be constructed as required by the sidewalk plan approved by the Marion County Plan Commission, which construction shall be the responsibility of the lot owner upon whose lot the sidewalk is to be constructed, provided, however, that any Common Area sidewalks shall be constructed by the Developer as designated on the final development sidewalk plan. All sidewalks to be constructed by lot owners shall be completed at such times as the driveway on the lot is constructed. All sidewalks shall be poured concrete,



with expansion joints, such construction to be perpetual and continuous along the street frontages and across the driveway of each Lot. In the event any Owner, or parties with whom Owner contracts for work on the Owner's Lot, causes damage to a sidewalk or street curb such Owner shall be responsible for repairing said damage.

**Section 14. Sales Office.** To the extent deemed necessary or desirable by Builders, Builders shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision.

**Section 15. Sanitary Waste Disposal.**

A. **Nuisances.** No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

B. **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of Marion County and these Restrictions.

C. **Connection Requirements for Sanitary Sewers.** All homes shall have sewers directly connected to the Indianapolis Sanitation System.

**Section 16. Diligence in Construction.** Every building whose construction on any Lot is begun shall be completed within a 300 day period after the beginning of such construction unless circumstances beyond the reasonable control of the builder and/or Owner prevent such completion. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. The Declarant and/or Homeowners Association shall have standing and authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

**Section 17. Heating Plant.** Every Dwelling Unit must contain a heating plant installed in compliance with the applicable codes and capable of providing adequate heat for year-round human habitation of the Dwelling Unit.

**Section 18. Landscaping.** No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Landscape Areas, except with express permission from the Board. Each Lot Owner shall provide reasonable landscaping on his Lot including, at a minimum, suitable foundation landscaping. All landscaping plans are subject to Committee approval in accordance with the guidelines and procedures promulgated by the Committee. The Committee may, in its discretion, modify such plans to promote the integrity and the aesthetic appearances of this subdivision. Finished grading of all yards must be completed within 15 days after the dwelling is constructed, weather permitting, and all yards must be seeded or sodded with grass within ten days after the completion of finish grading, weather permitting. Trees

provided by Declarant, if any, will be protected by Owner during construction and replaced within-30 days if damaged or if a tree dies on Owner Lot.

**Section 19. Playground.** Any Playground or other play areas or equipment erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. No playground equipment, tree houses, or similar structures shall be erected on any Lot without prior approval pursuant to Article IX hereof: provided, however, children's play equipment such as sandboxes, swings and slides, shall not require approval by the Committee provided such equipment is not more than six (6) feet high, maintained by the lot owner in good repair (including painting) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view of adjacent lot owners. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee.