

Hancock County

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
BLOSSOM TRACE VILLAS

THIS DECLARATION (hereinafter called "the Declaration" or "this Declaration") made this 29, day of Nov., 1999, by D.M. Development, LLP, an Indiana limited liability partnership (hereinafter called "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate in Hancock County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant is in the process of creating on the Real Estate residential community with public streets, walls, fences, private access drives, and landscaped areas, and other common facilities for the benefit of such residential community, to be known as Blossom Trace Villas, which community shall be developed substantially in accordance with the site development plans approved by the Hancock County Planning Commission under Docket Numbers May 25, 1999 and June 22, 1999 (hereinafter referred to as the "Site Plan");

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common property therein contained, and to this ends Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and for the benefit of each owner of all or part thereof; and

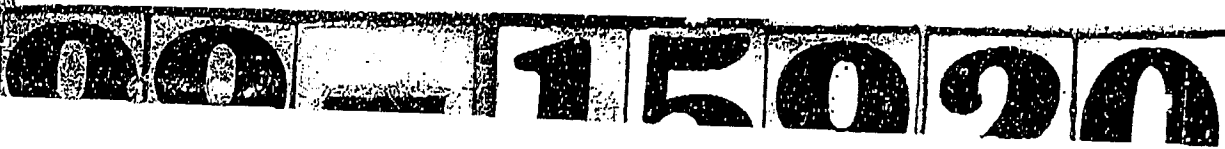
WHEREAS, Declarant deems it desirable for the efficient preservation of

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values and amenities in said community, to create an entity to which shall be delegated and assigned the powers of owning, maintaining and administering the common property located on the Property, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance, repairs and replacement of landscaping and other improvements as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana Non-profit corporation under the name "Blossom Trace Villas Homeowners Association, Inc.", or a similar name, as such entity for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the 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, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein, and which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate, and upon their heirs, successors and assigns.

ARTICLE I.

DEFINITIONS

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Section 1. The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

A. "Applicable Date" shall mean the "Applicable Date" as defined and determined in accordance with Article III, Section 3(B) hereof.

B. "Association" means Blossom Trace Villas Homeowners Association, Inc., an Indiana Non-profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

C. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

E. "Common Areas" or "Common Areas" shall mean (i) all portions of this Real Estate (including all improvements thereon) designated as "Common Areas", on any recorded subdivision plat of the Real Estate now or hereafter recorded in the Office of the Recorder of Hancock County, Indiana, and which are not identified as individually numbered Lots on any such Plat, and which are not Lots and which are not dedicated to the public; and (ii) any entry walls, subdivision perimeter fencing, landscaping, trees and other foliage which the Declarant or the Association may erect or install and which is, pursuant to this Declaration, to be maintained by the Association; and (iii) all facilities and personal property owned or leased by the Association from time to time.

F. "Common Expenses" means (i) the expenses of administration of the Association, and (ii) expenses of and in connection with the performance of the responsibilities and duties of the Association including, without limitation, expenses for the improvement, maintenance and repair of the Common Property, Drainage Easements and Utility Easements shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the Office of the Recorder of Hamilton County, Indiana, and (iii) all sums lawfully assessed against

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the Owners by the Association, and (iv) all sums declared by this Declaration to be Common Expenses.

G. "Declarant" means D.M. Development, LLP, an Indiana limited liability partnership, 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, without limitation, 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; provided however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

H. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Declarant no longer owns any Lot within or upon the Real Estate.

J. "Limited Common Area", if such term is used herein or in any supplement hereto, shall mean such portion of the Common Area as to which the use thereof is limited or restricted (in accordance with the terms hereof, or any supplement hereto, or any subdivision Plat of the Property) to the Owner or Owners of one or more but less than all of the Lots, and which are clearly designed and intended for use by the Owner or Owners of only one Lot, and which are appurtenant to only one Lot, and which are not necessary for the beneficial use and enjoyment of all of the Lots.

K. "Living Unit" shall mean a residential housing unit consisting of a group of rooms and hallways which are designed and intended for use as the living quarters for one family or housekeeping unit. Except as herein otherwise provided, for the purpose of determining membership in the Association, each

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Living Unit as initially constructed on a Lot by the Declarant or others shall be considered as a separate and individual Unit. In addition, Living Unit shall be deemed to include any enclosed garage, enclosed or covered porch, or patio appurtenant to such Living Unit.

K. "Lot" shall mean and refer to each numbered parcel of land shown and identified as a Lot on any subdivision plat of the Real Estate now or hereafter recorded in the Office of the Recorder of Hancock County, Indiana, which is designed and intended for use as a building site for a Living Unit, as designated by the Declarant by its deed of the same to another Person.

L. "Member" shall mean any person or entity holding membership in the Association as provided in Article III hereof.

M. "Mortgage" shall mean any mortgage or other security instrument by which such Lot or any part thereof or any structure thereon is encumbered.

N. "Mortgagee" shall mean any person or entity named as the mortgagee under any mortgage on any Lot or Living Unit.

O. "Owner" shall mean the record owner, whether one or more persons or entities, of fee-simple title to any Lot including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

P. "Person" shall mean a natural person, or a firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Q. "Property" shall mean and refer to the Real Estate which has been subjected to, and is, at any time, subject to this Declaration.

R. "Site Plan" shall mean and refer to the site development plans affecting the real estate as approved by the Hancock County Planning Commission under

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Docket Numbers May 25, 1999 and June 22, 1999 pursuant to which the proposed plat of the Real Estate and the proposed development plans for the Real Estate were approved by the said Planning Commission and by the Town of Fortville, Hancock County, Indiana.

S. "Utility Easement" ("U.E."), "Drainage Easement" ("D.E."), "Landscape Easement" ("L.E.") and "Sanitary Easement" ("S.E.") refers to those portions of the real estate designated on any subdivision plat of the real estate now or hereafter recorded in the Office of the Recorder of Hancock County, Indiana as either a "Utility Easement" or a "Drainage Easement", or a "Sanitary Easement", or a "Landscape Easement" or any combination of such easements referred to on the Plat as "D.S. & U.E." or "D.S.L. & U.E.".

T. "Zoning Covenants" shall mean and refer to any written covenants commitments heretofore entered into by the Declarant or its predecessors in title to the real estate made or given in connection with the zoning or rezoning classification of the real estate at the time that this Declaration is recorded.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the real estate hereinbefore described shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. The Owner of any Lot at any time subject to this Declaration and all other Persons having any right, title or interest therein, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or from subsequent Owner of such Lot, or the acceptance of any right, title or interest therein or thereto, (ii) or the act of occupancy of any Lot, shall accept such deed, execute such contract,

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accept such right, title or interest, and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract, acceptance of such right, title or interest, or by undertaking such occupancy, each Owner and all other such persons acknowledge the rights and powers of Declarant and of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

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ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot within the real estate, shall be entitled and required to be a Member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a Member. An Owner of more than one Lot shall be entitled to, and shall be required to have one membership for each such Lot. Each such membership or memberships shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or the Declarant may be a Member of the Association.

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Section 2. Transfer. Memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by deed, assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon

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becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a Member, in its sole discretion. Any attempt to make a prohibited transfer of membership is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of record title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

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Section 3. Voting. The Association shall have two (2) classes of voting membership, as follows:

A. Class A. Class A Members shall be Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one (1) vote for each Lot owned 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 person holds title to any Lot, the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

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B. Class B. The Class B member shall be the Declarant, who shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease

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and terminate upon the "Applicable Date" which date shall be the first to occur of:

- (a) the date upon which the written resignation of the Class B member, as such, is delivered to the resident agent of the Association; or
- (b) one hundred twenty (120) days after seventy-five percent (75%) of the Lots in the Property have been conveyed to Owners other than the Declarant; provided, however, that for the purpose of making any determination under this subsection (b) it shall be assumed that there are 22 Lots in the Property whether or not there are in fact such number of Lots in the Property at any time; or
- (c) three (3) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; or
- (d) seven (7) years from the date of recording of this Declaration.

From and after the Applicable Date, Declarant shall be entitled to one Class A membership for each Lot of which it is the Owner.

Section 4. Suspension of Voting Rights. In the event any Owner other than the Declarant shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a Member of the Association may be suspended as permitted by the Indiana Non Profit Corporation Act of 1991, as amended, and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE IV.

PROPERTY RIGHTS

Section 1. General Provisions.

A. All easements described in this Declaration are permanent easements, appurtenant to, and running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the owner and mortgagee, if any, from time to time of the Common Area,

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and their respective heirs, successors, personal representatives or assigns.

B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending December 31, 2009, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Owner's Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas, limited however to and for the uses and purposes for which any portion of the Common Area is designed and intended, which right and easement shall include, but not be limited to, use and enjoyment of open spaces and all other parts of the Common Area, other than Limited Common Areas, if any. All such rights and easements of Owners shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to pass reasonable rules with respect to the Common Area for the health, comfort, safety and welfare of persons using the same;

B. The right of the Association to suspend the voting rights and right to the use of recreational facilities, if any, situated upon the Common Area (but not rights of access to Lots) by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

C. The right of the Association to levy assessments as provided in the

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Declaration; and

D. The rights of the Association and Declarant reserved under Sections 4 and 5 of this Article IV or elsewhere in this Declaration.

Section 3. Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment in and to the Common Area to residents of his Lot, including the members of his family, his tenants, or contract purchasers.

Section 4. Association's Control Over Common Area.

A. The Association shall have the right to own, manage, repair, maintain, improve, regulate and operate the Common Area.

B. The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 4(A) next hereinabove, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgage shall have received the prior written approval specified in Article XI hereinbelow.

C. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities and other purposes necessary or useful for the proper maintenance and operation of the property, subject to any prior written approval required by Article XI hereinbelow.

D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may at any time be granted by Declarant or the Association (subject to the approval referred to in the preceding paragraph) to

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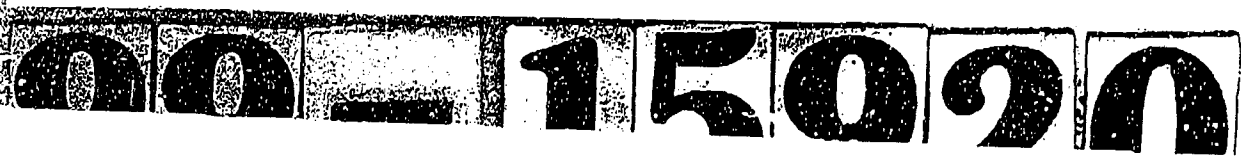
any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduits and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area.

E. Anything herein apparently to the contrary notwithstanding, except as expressly provided for herein, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or any part thereof shall be effective unless it shall have received the prior written approval specified in Article XI hereinafter.

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots and other portions of the Property owned by it from time to time, except as otherwise specified herein. In addition, until the last numbered parcel of land shown upon and identified as a Lot on any recorded plat of the Real Estate is conveyed to an Owner other than the Declarant, Declarant shall have the right and easement over the Common Area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Property) and the right to maintain and use facilities (including, but not limited to, model homes and sales offices) and signs upon the Common Area and any other portions of the Property (other than Lots owned by an Owner other than Declarant) for the purpose of marketing lots, and to invite and escort the public thereon for such purpose.

Section 6. Non-Dedication to Public Uses. Nothing contained in any subdivision plat of any part of the Real Estate shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Area being reserved to Declarant, the Owners and the Association as provided in

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this Declaration, but subject, however, to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 7. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any Living Unit or any structure containing one or more Living Units or any improvements to any Living Unit encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement to such encroaching Living Unit shall exist for the continuance of any such encroachment on the Common Area.

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ARTICLE V.

IMPROVEMENT AND TRANSFER OF COMMON AREA

Section 1. Improvement of Common Area. Declarant hereby covenants that, to the extent the same are to be included in the Property, it will construct or and improve the Common Areas by the installation of following items provided for in, and in the manner required by the Site Development Plan, or otherwise:

- A. All streets, curbs, sidewalks parallel to the streets, dawn to dusk lighting, and all swales, berms, and landscaping.

Section 2. Protection of Rights-of Way. The improvement of the Common Areas as provided herein, and the construction of any perimeter fencing around the Subdivision by the Declarant shall be subject to the following specific limitations:

- A. No permanent structures, including fences or walls shall be installed within or upon any portion of the property designated on the Plat thereof as a dedicated, public thoroughfare right-of-way.

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B. No fence, wall, hedge or shrub planting shall be permitted to remain within the sight-lines of any intersection unless the foliage-line is maintained at sufficient height to prevent obstruction of such sight-lines.

Section 3. Conveyance of Common Area to Association. Declarant hereby covenants that it shall complete the improvement of the Common Area and shall convey and transfer the Common Area included in and constituting a part of the Real Estate to the Association on or before the Applicable Date. Each portion of the Common Area so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to any dedicated or public street or road rights-of-way affecting the same and all easements, covenants, conditions, limitations and restrictions than of record, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association.

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ARTICLE VI.

ASSESSMENTS

Section 1. Personal Obligations. Each Owner of a Lot by acceptance of deed or other instrument of conveyance therefore which is executed after the date of recording of this Declaration, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, as may be hereafter assessed, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area (including, but not limited to, any and all streets and roadways constructed or located thereon) and all other expenses

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incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and cost of hazard and liability insurance for Common Area; maintenance, upkeep and repair of the exteriors of the Living Units; lawn maintenance, snow removal, trash removal, sewer charges and water charges (if payable by the Association); street lighting (if provided by the Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

Any assessments authorized herein, together with interest, costs and reasonable attorney's fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hancock County, Indiana. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot.

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Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the convenience, recreation, health, safety and welfare of the Owners and residents of the Property, to construct, manage, improve, maintain, repair and administer the Common Area (including, but not limited to, any and all streets and roadways constructed or located thereon), the Drainage and Utility Easements, and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder.

An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be replaced on a periodic basis and those portions of the exterior of the Living Units which the Association is required to maintain and which must be replaced on a periodic basis. Such reserve fund shall be maintained out of the regular annual assessments.

Section 3. Annual Assessments; Maximum Increase. Until _____, 19__, the initial maximum annual assessment shall not exceed the annual rate of \$1,500.00 for each Lot.

- A. The Board of Directors may fix the actual annual assessments at any amount not in excess of the maximums permitted hereunder.
- B. From and after _____, 19__, the annual assessment may be continued at the same level as the annual assessments for the previous year, or increased by an amount not exceeding 5 percent of the previous year's assessment without a vote of the membership.
- C. From and after _____, 19__, the maximum annual assessments may be increased in an amount greater than 5 percent only after a vote of

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two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting called for this purpose, but no such increase shall exceed ten percent (10%) of the maximum annual assessments permitted for the previous year.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon or within the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article VI, Sections 3 or 4, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast fifty percent (50%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected on a monthly basis, each installment constituting one-twelfth (1/12) of the annual



assessment, payable on the first day of each month, and shall be deemed Delinquent as the Board determines. Special assessments shall become due and payable, and shall be deemed delinquent as the Board determines.

Section 7. Establishment of Annual Assessments. By November 1 of each year the Board shall fix the amount of annual assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. At the time the Board fixes the amount of annual assessments, it shall adopt a budget for the following calendar year and shall cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 8. Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot subjected to this Declaration on the first day of the month following the month within which the Declarant conveys such Lot to an Owner. The first annual assessment shall be pro-rated according to the number of months remaining in the calendar year for which such annual assessment is imposed. No Lot owned by the Declarant shall be subject to any annual assessment or special assessment until there shall have been a completed residence constructed thereon.

Section 9. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 10. Nonpayment of Assessments. Any installments of annual or special assessments which are not paid when due shall be deemed delinquent. If

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an installment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of twelve percent (12%) per annum and shall remain a continuing lien in favor of the Association on the Lot so assessed and the improvements thereon; and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 11. Recording and Enforcement of Liens. To evidence a lien for delinquent sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hancock County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Such lien shall be enforced by legal action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure.

The Association shall, upon written request, report to any Mortgagee of a

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Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due with respect to such Lot, provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

Section 12. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate only to the lien of any first mortgage and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot pursuant to foreclosure or other remedies provided for in a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming payable or from the lien thereof, and no such sale shall relieve the person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all Lots as a common expense.

Section 13. Association's Initial Working Capital and Start-Up Fund. At the closing of the initial sale of each Lot by Declarant to an Owner other than Declarant, the purchaser of such Lot shall pay to the Association the sum Three Hundred Fifty Dollars (\$350.00), which amount shall be held and used by the Association as a working capital fund and start up fund during the initial period of operation of the Property and the Association, to enable the Association to have cash available to pay authorized expenses, or to acquire necessary equipment, supplies, or services deemed necessary or desirable by the Board. Such payment by the Owner shall not be deemed an advance payment of any

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installment of assessments.

On or before one hundred twenty (120) days after the recording of this Declaration, the Declarant shall pay to the Association the required contribution to the Association's working capital fund and start-up fund for all of such Lots then owned by it which remain unsold, which amount the Declarant shall then be entitled to recover directly from subsequent purchasers of such unsold Lots, who shall pay the same to the Declarant for Declarant's own account in lieu of making payment thereof to the Association.

Section 14. Contributions to the Association By Declarant Prior to Applicable Date. Declarant shall have the duty to contribute to the Association sufficient funds to enable the Association to fulfill its duties after the Association shall have exhausted all start-up funding received pursuant to Section 13 immediately above, as well as all Regular Assessments and Special Assessments theretofore collected from the Owners. The Declarant's duty under this Section shall expire on the applicable date.

ARTICLE VII

BLOSSOM TRACE VILLAS ARCHITECTURAL CONTROL COMMITTEE

Section 1. Creation. There shall be, and hereby is created and established the Blossom Trace Villas Architectural Control Committee to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members, appointed from time to time by Declarant, and who shall be subject to removal by Declarant at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons, who are from among the Directors of the Association as appointed from time to time by the Board of Directors.

Section 2. Purposes and Powers of Committee. The Committee shall regulate

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the external appearance of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping around or upon any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

A. General. No exterior additions, removals or alterations (including changes in color or appearance) to any building on the property, additional fences or exterior lighting, hedges, walls, walkways and other structures, shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the Living Units and other buildings and improvements on the property, until the written plans and specifications showing in reasonable detail the kind, nature, shape, height, materials (including color), location and approximate cost of same shall have been submitted to and approved in writing by the Committee as to harmony of the external design and location in relation to surrounding buildings in the Property.

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

- (i) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions of in this Declaration, or of any subdivision plat of the Real Estate recorded in the Office of the Recorder of Hancock County, Indiana;
- (ii) The design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (iii) The proposed repainting or improvement, or any part thereof, would,

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in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

C. Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any subdivision plat of the Real Estate recorded in the Office of the recorder of Hamilton County, Indiana as long as the same are not inconsistent with this Declaration or such subdivision plat(s).

Section 3. Duties of Committee. The Committee shall approve or disapprove the proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval. In the event said Board, or its designated Committee, fails to approve or disapprove such construction, improvement and location within thirty (30) days after said written plans and specifications have been submitted to it or if no suit to enjoin the making of such additions, alterations or changes or to force the cessation thereof has been commenced within thirty (30) days of such submission, such approval will be deemed to have been given.

Section 4. Liability of Committee. Neither the Committee, the Declarant, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

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Section 5. Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VII.

Section 6. Not-application to Declarant. Notwithstanding the provisions this Article VII or any other provisions of this Declaration requiring the approval of the Committee, neither the Declarant nor any entity related to Declarant shall be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by Declarant or by any entity related to Declarant, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Property.

Section 7. Restoration in Accordance with Original Plans. Any restoration or repair of the Common Areas or exteriors of Living Units, After partial condemnation or damage due to fire or other casualty, shall be performed substantially in accordance with this Declaration and the original plans and specifications for the same, unless other action is approved by the Committee and by eligible holders holding first mortgages on the Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible holders of first mortgages.

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ARTICLE VIII.

**GENERAL AND MISCELLANEOUS POWERS
AND RESPONSIBILITIES OF ASSOCIATION**

Section 1. Board of Directors. The Association shall elect a Board of Directors as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

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Section 2. Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to the following:

A. Maintenance, repair and replacement of Declarant installed decorative street entry walls, driveway aprons, street lights, and street signs within or upon the Property, landscaping and other improvements in and upon the Common Areas and within the Drainage or Utility Easements as the Association deems necessary or appropriate, in a clean and attractive condition and in good repair.

B. In order to preserve the uniform and high standard of the Property, the Association shall also be responsible for the maintenance and repair of the exterior of all Living Units and other buildings and improvements located on Lots, which responsibility shall include, but not be limited to, the maintenance and repair of exterior surfaces of all buildings on the Property, including the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roof, gutters, downspouts and overhangs, the maintenance and repair of the exterior sides of exterior windows and doors, excluding the glass contained therein, and necessary painting, staining and repair of patio and porch structures as originally built on a Lot (but not of additions thereto made by an Owner, which shall be the responsibility of the Owner).

C. The Association shall mow, trim and water the Common Areas and otherwise care for and maintain all grass, trees, shrubbery, plants and other landscaping located on the Lots and within the Common Areas.

D. The Association shall provide to all Owners, regular and routine lawn cutting, and lawn maintenance including fertilization and trimming, the expenses incurred for such services being a Common Expense.

E. The Association shall provide to all Owners snow removal from each Owner's driveway and upon front sidewalks from the driveway to the front door

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of each residence, under such circumstances and with such frequency as is reasonable and customary under common standards for property management.

F. Maintenance, repair and replacement of any drainage systems in and upon the Drainage Basements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the Office of the Recorder of Hamilton County, Indiana) as installed by Declarant in good condition and repair.

G. Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverage required under Article XII of this Declaration and such other insurance as the Association deems necessary or advisable.

H. Payment of taxes, if any, assessed against and payable with respect to the Common Area.

I. Assessment of annual and special assessments and collection of such assessments from the Owners for the Common Expenses.

J. The Association may obtain and pay for the services of any persons or entities to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association shall, or may arrange with others to furnish trash collection and such other common services to each Lot as it deems desirable, on a basis consistent with recognized guidelines for normal and customary

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property management. Any agreement for professional management of the Property, or any other contract providing for services to the Association for the benefit of the Owners must provide for termination by either party without cause and without payment of a termination fee on sixty (60) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

K. Adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas, and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

Section 3. Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is

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intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

Section 5. Additional Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit or proceedings by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided hereinafter) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for 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 or officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual

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knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this Section 5.

Section 5. Board. the Board of Directors of the Association may provide the surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors 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 by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE IX.

OWNERS' MAINTENANCE AND RESPONSIBILITIES

Section 1. Maintenance of Living Units and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the Lot and Living Unit free trash and otherwise neat and attractive in appearance, all at the Owner's sole cost and expense. In the event

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the Owner of any Lot fails to maintain his Lot and the improvements thereon in a manner satisfactory to the Association, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to clean, repair, maintain and restore the Lot. The cost of such maintenance, repair and restoration shall be and constitute special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither 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.

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Section 2. Damage to Common Area. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Area or any Drainage Easement, or Utility Easement areas, if due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area (or such Easement areas) or if maintenance, repairs or replacement shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

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Section 3. Additional Restrictions Concerning Existing and Planted Trees.

Existing or newly planted trees on any Lot shall not be removed by an Owner, after his occupancy, without the prior written approval of the Committee; provided, however, that nothing herein shall prevent the removal of trees by or at the direction of the Declarant during the development of the Real Estate and by Declarant, or at the direction of the Declarant during the initial construction of a residence or accessory building on any Lot.

ARTICLE X

PARTY WALLS

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Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Living Unit upon the Property and which connects two (2) or more Living Units or forms part of walls in two (2) or more Living Units shall constitute a Party Wall (any such wall being herein referred to as a "Party Wall") and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligent or willful acts or omissions shall apply.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall.

Section 3. Destruction by Fire or Other Casualty. If any Party Wall is destroyed by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such Party Wall or by the Association, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof, in equal proportions, without prejudice however, to the right of any such Owner to call for a larger



contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that any damage to a Party Wall is not covered or paid for by the insurance provided for herein, an Owner who, by his negligent or willful conduct causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to such Owner's Lot and shall pass to such Owner's successors in title to such Lot.

Section 6. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and the two arbitrators so chosen shall choose a third arbitrator, and the decision regarding any such dispute shall be made by a majority of the arbitrators. Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors shall select an arbitrator for the refusing party.

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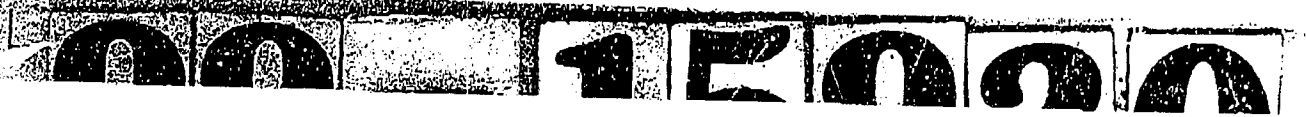
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ARTICLE XI.

GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS

APPLICABLE TO PROPERTY

Section 1. Lot Restrictions. No more than one residence shall be erected or maintained on any Lot. No residence shall be used for purposes other than as a single family residence, nor shall any trade or business of any kind be carried on within a residence or upon a Lot, nor shall any Lot or any part thereof be leased,



sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model residences and business and sales offices by Declarant during the construction and sale periods.
- B. The maintenance of offices by the Association or its designated manager for purposes of management of the Property.
- C. Lease, rental or use of a residence for purposes consistent with this Section.
- D. The use of a residence by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

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Section 2. Restrictions Concerning Size, Placement and Exteriors of Living Units. All Living Units constructed upon Lots within the Property shall meet the following minimum requirements:

A. Minimum Living Space Areas. The minimum square footage of living space of Living Units constructed on the Lots in the Property shall in no case contain less than ^{1,000}~~1,400~~ square feet, exclusive of basements, porches, terraces, patios and garages.

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B. Residential Set-Back Requirements.

- (1) Front Set-Backs. Unless otherwise provided in these Covenants or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development in compliance with a minimum front yard set-back line of thirty-five (35) feet from the road right-of-way.



(ii) Side Yards. The side minimum aggregate distance between the sidewalls of each building containing two (2) Living Units shall not be less than 20 feet.

(iii) Rear Yards. The rear set-back line shall not less than ten (10) feet from the rear line of the Property.

C. Exterior Construction Requirements. The finished exterior of every Living Unit constructed or placed on any Lot in the Property shall be brick, exclusive of doors, windows, trim, roofing, guttering and downspouts. The minimum roof pitch shall be 6/12 in the Property. All Living Unit exteriors shall be finished in brick and trim color schemes which are harmonious throughout the Property.

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Section 3. Common Area Restrictions. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area, nor shall any "For Sale" or "For Rent" signs or any window display advertising be maintained or permitted on any part thereof, except that Declarant reserves the right for itself or its agents to maintain business and sales offices, storage areas and construction offices on the Common Area during the construction and sales period until the last Lot within the Real Estate is conveyed to an Owner other than Declarant, and to place "For Sale" or any other signs on any part of the Common Area and to use any part of the Common Area for sale or display purposes during such period. Subject to the aforesaid rights of the Declarant, Common Area shall be used only for the purposes for which the same are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

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Section 4. Obstructions. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area,



without the prior written consent of the Association except construction materials and equipment during the construction period or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

Section 5. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of the Common Area or any part thereof shall be committed by any Owner or any invitee or tenant of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed in any residences, on any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property; provided, however, that no act, conduct, activity or operation which Declarant is authorized or permitted to do hereunder shall ever be deemed to be noxious, destructive, offensive nor a nuisance for purposes of this Section 4.

Section 6. Fences, Walls and Patios. No Owner shall relocate, heighten, lower or otherwise move or change any fence, wall or patio upon the Property except as provided in Article VII hereinabove.

Section 7. No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Common Area, or on a Lot so as to be visible from outside the Lot. The Common Areas shall be kept

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free and clear of all rubbish, debris and other unsightly materials.

Section 8. Animals. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot or on the Common Area or any part thereof, except that common household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days written notice from the Board, and provided further, that upon written request of 75% of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of any pet.

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Section 9. Prohibited Structures. No structure of a temporary character, and no trailer, boat, camper-bus, freestanding basketball goal, outdoor swing set, tent, or shack shall be maintained on any Lot nor shall any garage or other building except a permanent residence be used on any Lot at any time as a residence or sleeping quarter, either temporarily or permanently.

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Section 10. Storage. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only on regularly scheduled trash collection days. In addition, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/ trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles (including station

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wagons and small trucks such as pickups of 3/4 ton capacity or less and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Area, either permanently or temporarily.

Section 11. Signs. No signs of any kind other than designations, (in such styles and materials as the Association shall by rule or regulation approve) of street addresses and names of occupants shall be displayed to the public view on any Lot or Common Area, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require, and except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale periods.

Section 12. Antennae. No exterior television or radio antennae or receptor of any sort shall be placed, allowed or maintained upon any portion of any Lot, except that with the prior written approval of the Committee granted pursuant to the provisions of Article VII, an exterior satellite transmission receptor not exceeding 24 inches in diameter may be installed if, but only if, the same is securely affixed to the roofed portion of the residence located upon the Lot.

Section 13. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No residence may be leased for a period of less than 30 days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his residence.

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Section 14. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including the Common Area, as the Board in its sole discretion deems appropriate or necessary.

ARTICLE XII.

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request made to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot and the address of such party, any such mortgage holder or insurer or guarantor will be entitled to timely written notice of:

(A) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot or residence on which there is a First Mortgage held, insured, or guaranteed by such mortgage holder or insurer or guarantor, which remains uncured for a period of 60 days;

(B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation, by an Owner of a Lot or residence subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;

(C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(D) Any proposed action which would require the consent of a

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specified percentage of mortgage holders as specified in this Article XI:

Section 3. Termination reallocation. Any election to terminate the legal status of the project after substantial destruction or a substantial taking or condemnation of the Property must have the written approval of at least 51% of those holders of mortgages which are entitled to notice as provided in Section 2.

Section 4. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or residence will not be subject to any right of first refusal or any similar restriction in favor of the Association, the Declarant or other Owners.

Section 5. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage, shall not be liable for the unpaid assessments on the Lot which were payable prior to the acquisition of title to such Lot by the First Mortgagee or such purchaser.

Section 6. Examination of Books and Records. First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 7. Designation of Representative. Any holder of a First Mortgage on a Lot or residence may designate a representative to attend meetings of members, but such representative shall not have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved.

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Section 8. Distribution of Insurance Proceeds and Condemnation Awards.

No provision of this Declaration or the By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Area.

ARTICLE XIII.

INSURANCE

Section 1. Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance coverage shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests, and (ii) waive any defense based on invalidity arising from the acts of the insured, and (iii) that the liability of the carrier issuing insurance to the Association shall not be affected or diminished by reason of the existence of any additional insurance carried by any Owner. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

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Section 2. Liability Insurance. The Association shall also purchase and maintain 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 One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Area, and shall insure the Association, its Board of Directors, officers, professional managers, agents and employees, any committee of the Association or of the Board of Directors, and all other persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Property. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

Section 3. Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be 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 officers' and directors' liability insurance.

Section 4. Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expenses.

Section 5. Owners' Individual Policies. Each Owner shall carry insurance for his own benefit insuring his personal liability, the physical structure and fixtures of his Living Unit, and the contents of his Living Unit. Furthermore, all such policies must contain waivers of subrogation against the Association and its insurers.

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ARTICLE XIV.

AMENDMENTS OF DECLARATION

Section 1. By the Association. 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 of the members of the Association at which the proposed amendment is to be considered; which notice shall be given in writing to all Owners and others entitled to such notice not less than 30 days prior to the date of the scheduled meeting.

B. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by 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 of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

D. Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the votes of all Owners; provided, however, that any such amendment shall require the prior written approval of Declarant so long as Declarant owns any Lots within and upon the Property. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing Article XI., Section 2.

E. Special Amendments. No amendment to this Declaration shall be adopted

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which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4 of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing Article XI., Section 2.

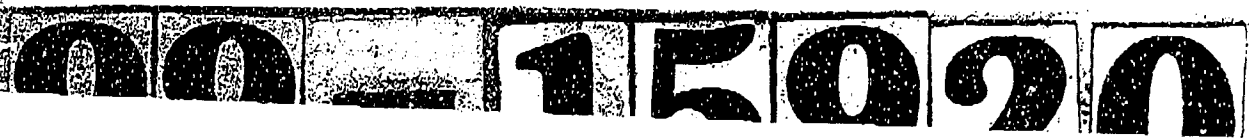
Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

Section 2. By Declarant. Declarant hereby reserves the right at all times prior to the applicable date to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, without the approval of any other person or entity, in order to bring Declarant into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association,

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the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 3. Recording. Each amendment to the Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and no amendment shall become effective until so recorded.

ARTICLE XV.

GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by

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any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain a violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions herein and hereby established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinabove provided.

Section 3. Access. For the purpose solely of performing the repairs and maintenance authorized by this Declaration, the Association through its duly authorized agents, employees and contractors, shall have the right, after reasonable notice to the Owner (except in an emergency in which case no notice shall be required), to enter upon and into any Lot.

Section 4. Emergency Access. For the purpose of performing emergency repairs under this Declaration, or of taking emergency action to seal a residence from weather or otherwise to prevent damage or destruction to any Lot or residence, the Association, through its duly authorized agents, employees and

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contractors, shall have the right to enter upon and into any Lot or residence at any time, without notice, with such persons and material as the Association deems necessary, to accomplish such emergency repairs or take such emergency action.

Section 5. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing.

Section 7. Captions. The Article and Section headings herein are intended for convenience of reference only and shall not be given any substantive effect.

Section 8. Construction. In the event of an apparent conflict between this Declaration and The Articles of Incorporation or the By-Laws, the provisions of this Declaration shall govern.

IN WITNESS WHEREOF, D.M. Development, LLP, an Indiana limited liability partnership, has caused this document to be executed as of the day and year first above written.

D.M. Development, LLP
An Indiana limited liability
partnership

By: Thomas A. Martini
Thomas A. Martini, General Partner

By: Alexander C. Dickerson
Alexander C. Dickerson, General
Partner

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STATE OF INDIANA)
) SS.
COUNTY OF _____)

Before me, a Notary Public in and for the State of Indiana, personally appeared Thomas E. Marten and Alexander C. Dickerson, the General Partners of D.M. Development, LLP, an Indiana limited liability partnership, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions and Easements of Blossom Trace Villas for and on behalf of said partnership.

WITNESS my Hand and Notarial seal this _____ day of _____, 1999.

My Commission Expires:

Notary Public [Signature]

County of Residence:

Notary Public [Printed]

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Gregory Dickerson
HARRISBURG COUNTY CLERK RECORDER

This Instrument Prepared By: Sam Stoehr, Attorney at Law, I.D. #528-49, 6100 N. Keystone Avenue, Suite 448, Indianapolis, IN 46220, (317)251-2277.

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