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FIRST AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS OF
BROCKTON MANOR SUBDIVISION

The undersigned Declarant, pursuant to Article XVI, Section 2(e) of the Declaration of Covenants and Restrictions of Brockton Manor Subdivision, recorded in the Office of the recorder of Johnson County, Indiana as Instrument No 94013933 in Book 67, Page 294 ("Declaration") hereby amends the Declaration to subject additional property to be known as Brockton Manor Section II to the covenants and restrictions set forth therein by substituting Exhibit A attached hereto and incorporated by reference as the legal description of the Real Estate, as defined in the Declaration

Except as amended herein, the Declaration shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Declaration of Covenants and Restrictions of Brockton Manor Subdivision has been executed this 29th day of November, 1995.

Brockton Manor Development Corp.

By: [Signature]
Greg Allen, President

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a Notary Public in and for said County and State, personally appeared) Greg Allen, President of Brockton Manor Development Corp, who acknowledged the execution of the above and foregoing instrument on behalf of said corporation, as his voluntary act and deed for the purposes and uses therein set forth

WITNESS my hand and Notarial Seal this 29th day of NOVEMBER, 1995

My Commission Expires:

9-1-1996

[Signature]
Notary Public
Resident of JOHNSON County

This instrument was prepared by: Sally Bradley Peacock
HENDERSON, DAILY, WITTHROW & DEVOE
2600 One Indiana Square
Indianapolis, Indiana 46204



EXHIBIT A

Legal Description for
Brockton Manor Subdivision

BROCKTON MANOR SECTION 1

A part of the Northeast Quarter of Section 10 and part of the West Half of the Northwest Quarter of Section 11, both in Township 13 North, Range 3 East of the Second Principal Meridian in White River Township, Johnson County, Indiana, more particularly described as follows:

Commencing at a steel disc found in place and marking the Northwest corner of said Section 11; thence South 00 degrees 18 minutes 00 seconds East (bearing assumed), a distance of 338.00 feet to the POINT OF BEGINNING of this described tract, said point also being located in the intersection of County Road 800 North (Olive Branch Road) and County Road 400 West (Berry Road), the next four (4) courses being on and along the approximate centerline of said Olive Branch Road; (1) thence North 76 degrees 28 minutes 00 seconds East a distance of 68.45 feet; (2) thence North 83 degrees 22 minutes 00 seconds East a distance of 328.00 feet; (3) thence North 82 degrees 58 minutes 00 seconds East a distance of 105.35 feet; (4) thence South 80 degrees 24 minutes 00 seconds East a distance of 317.73 feet; thence South 03 degrees 23 minutes 50 seconds West a distance of 350.72 feet to an iron pin found in place; thence South 50 degrees 52 minutes 44 seconds East a distance of 172.87 feet to an iron pin found in place; thence South 00 degrees 17 minutes 00 seconds East a distance of 760.48 feet to an iron pin found in place; thence South 87 degrees 55 minutes 05 seconds West a distance of 889.71 feet to a point on the East line of Hunter's Pointe Subdivision, Section 3, as per plat thereof recorded in Plat Book "C", Pages 93 and 94 in the Office of the Recorder of Johnson County, Indiana; thence North 00 degrees 17 minutes 11 second West on and along said East line a distance of 137.12 feet to a point on the South line of the Northeast Quarter of the Northeast Quarter of said Section 10; thence South 89 degrees 41 minutes 45 seconds West on and along said South line a distance of 697.01 feet to a point on the East line of said Hunter's Pointe Subdivision, Section 3; thence North 00 degrees 04 minutes 01 second West on and along said East line and along the East line of Hunter's Pointe Subdivision, Section 1, as per plat thereof, recorded in Plat Book 9, Page 42, a distance of 1,184.79 feet to the Northeast corner of said Hunter's Pointe, Section 1, said point also being on the approximate centerline of said Olive Branch Road, the next four courses being on and along said approximate centerline; (1) thence South 70 degrees 04 minutes 58 seconds East a distance of 378.08 feet; (2) thence South 70 degrees 04 minutes 50 seconds East a distance of 97.00 feet; (3) thence South 78 degrees 03 minutes 50 seconds East a distance of 100.00 feet; (4) thence North 88 degrees 41 minutes 32 seconds East a distance of 150.00 feet to the POINT OF BEGINNING, containing 40.985 acres, more or less

ALSO:

BROCKTON MANOR SECTION 11

A part of the Northwest Quarter of Section 11, Township 13 North, Range 3 East of the Second Principal Meridian, Johnson County, Indiana, more particularly described as follows:

BEGINNING at the Southwest corner of said Northwest Quarter Section, said point also being the Northwest corner of Willow Lakes Subdivision, Section 2 as per plat thereof, recorded in Plat Book "C", Pages 203 and 204 in the Office of the Recorder of Johnson County, Indiana, said point also being the Southeast corner of Hunter's Pointe Subdivision, Section 4 as per plat thereof recorded in Plat Book "C", Pages 95 and 96; thence North 00 degrees 17 minutes 11 seconds West on and along the West line of said Northwest Quarter Section, and along the East line of said Hunter's Pointe, Section 4 a distance of 1203.98 feet to a point on the East property line of Lot number 34 in Hunter's Pointe Subdivision, Section 3 as per plat thereof, recorded in Plat Book "C", Pages 93 and 94; said point also being the Southwest corner of Lot number 42 in Brockton Manor Subdivision, as per plat thereof recorded in Plat Book "C", Pages 628A through 628D; thence North 87 degrees 55 minutes 05 seconds East on and along the South line of said Brockton Manor Subdivision a distance of 592.61 feet; thence South 08 degrees 49 minutes 27 seconds West a distance of 138.53 feet; thence South 37 degrees 24 minutes 17 seconds East a distance of 487.93 feet; thence North 80 degrees 46 minutes 45 seconds East a distance of 394.88 feet; thence South 24 degrees 55 minutes 58 seconds East a distance of 106.42 feet; thence South 00 degrees 17 minutes 11 seconds East a distance of 135.00 feet; thence South 01 degrees 05 minutes 34 seconds East a distance of 50.00 feet; thence South 00 degrees 17 minutes 11 seconds East a distance of 436.95 feet to a point on the South line of said Northwest Quarter Section, said point also being on the North line of said Willow Lakes Subdivision, Section 2; thence South 87 degrees 58 minutes 47 seconds West on and along the South line of said Northwest Quarter Section and along the North line of said Willow Lakes, Section 2 a distance of 1300.67 feet to the Point of Beginning, containing 28.598 acres, more or less.

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
BROCKTON MANOR SUBDIVISION**

This Declaration of Covenants and Restrictions of Brockton Manor Subdivision ("Declaration") is made this 3rd day of JUNE, 1994, by Brockton Manor Development, Corp., an Indiana corporation (the "Declarant").

W I T N E S S E T H:

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

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, lakes, landscaped areas, open spaces, walls, fences and other common areas and amenities for the benefit of such residential community, to be known as "Brockton Manor Subdivision"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration 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 each Owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas located on the Real Estate, 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 health, safety and welfare of the Owners of the Real Estate, 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 "Brockton Manor Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant, as owner of the Real Estate or with the consent of the owner of the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration 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.

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" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Association" shall mean and refer to Brockton Manor Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, at 222, which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;
- (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, By-Laws and this Declaration;
- (f) "By-Laws" shall mean and refer to the Code of By-Laws of the Association, as the same may be amended from time to time;
- (g) "Committee" shall mean and refer to the "Brockton Manor Architectural Control Committee", the same

being the committee or entity established pursuant to Article VIII, Section 1, of this Declaration for the purposes herein stated;

- (h) "Common Areas" shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not dedicated to the public, which are not Lakes and which are not identified as Lots on any such plat, whether such plat is heretofore or hereafter recorded, (ii) such portions of the Real Estate as are herein declared to be Common Areas on the plat of the Real Estate even though located on or constituting part of one or more such Lots shown on any such plat, (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the Real Estate which are not Lots, or both;
- (i) "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (j) "Declarant" shall mean and refer to Brockton Manor Development Corp., an Indiana corporation, 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 Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
- (k) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family;
- (l) "Lakes" shall mean and refer to the Lakes located on the Real Estate;
- (m) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the

Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit), as designated by Declarant by its deed of the same to another Person. A Lot will not necessarily be the same as any single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, a "Lot" may be (i) any single numbered parcel of land identified as a Lot on such subdivision plat, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the Real Estate constitutes a "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another Person it is agreed between Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes such "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, such "Lot" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of conveyance so adjusting or changing the description of a "Lot" shall state on its face that it is made for such purpose. Any part of a "Lot" reconveyed to Declarant shall, upon such re-conveyance, lose its character as part of a "Lot" and may thereafter be conveyed by Declarant as part of another "Lot". The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Lots" or for any other reason;

- (n) "Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;

- (o) "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;
- (p) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (q) "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter made subject to this Declaration by Supplemental Declaration;
- (r) "The Real Estate" shall mean and refer to the parcel of real estate in Johnson County, Indiana, described in Exhibit "A" attached to this Declaration, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;
- (s) "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;

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

ARTICLE II
Declaration: Common Areas and Rights Therein

Section 1. Declaration. Declarant hereby expressly declares that the Properties shall be held, transferred and occupied subject to the Restrictions. 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.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas (except for such portions of the Common Areas, if any, as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Lots to the exclusion of other Lots) subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot.

ARTICLE III
Obligations of Declarant as to Common Areas

Section 1. Agreement to Construct and Convey Other Common Areas. Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, Common Areas consisting of the following items:

- (a) a storm drainage system for the Real Estate, which may include lakes, inlet pipes, open ditches, swales, pipes and other structures and drainage courses;
- (b) the installation, in common areas or landscape easements of landscaping and other screening materials;
- (c) the installation of entrance walls and other masonry fences in common areas or landscape easements;
- (d) the installation, within the street rights-of-way, of street lighting, street directories and street signs in common areas or in landscape easements.

Upon final construction or provision of the Common Areas described in this Section 1, Declarant covenants to convey by quitclaim deed all of its right, title and interest in and to said Common Areas to the Association and all such right, title and interest in and to said items (whether owned in fee, by leasehold, by contract or in the nature of an easement or license) shall then be the property of the Association, whether or not the same may be located entirely or partially on any one

or more of the Lots. As to any of such items of and constituting the Common Areas located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein as described in Article II, Section 2, of this Declaration.

Section 2. Additional Common Areas at Declarant's Option. Declarant may, at its option but without obligation to do so, convey other portions of the Real Estate to the Association for, or construct, install or provide for other items for or on, or services to serve, the Real Estate as amenities for, the mutual benefit, use or enjoyment of the Owners. Included as examples of the foregoing, but not limited therein, might be a community television antenna or receiving device to serve all of the Dwelling Units, storage buildings for storage of articles by Owners or provisions of portions of the Real Estate for recreational or other common uses or purposes for the Owners, including without limitation, a swimming pool, tennis courts, clubhouse or other recreational facilities or additional entrances, landscaped areas and walls. Any such portions of the Real Estate, or other items, or services, which Declarant, at its sole option, elects to convey, construct, install or provide as Common Areas shall become a part of the Common Areas only when so designated by Declarant in a written instrument executed by Declarant and delivered to the Association. Upon any such designation by Declarant, Declarant shall convey by quitclaim deed all of its right, title and interest in and to the Common Areas so designated to the Association and all such right, title and interest in and to the Common Areas so designated and conveyed shall then and thereupon be and become the property of the Association, whether or not the same constitutes, or may be located entirely or partially on, any one or more of the Lots or any Lot shown upon any recorded subdivision plat of the Real Estate, or parts thereof. As to any of such Common Areas so designated and conveyed pursuant to the foregoing provisions of this Section 3 which are located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein or thereto, as described in Article II, Section 2, of this Declaration.

ARTICLE IV

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 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, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (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 ten (10) votes for each Lot of which it is the Owner and ten (10) votes for each single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Real Estate of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, 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) the date upon which the written resignation of the Class B member as such is delivered to the resident agent of the Association, or (ii) the date Declarant no longer owns any Lots nor any portion of any single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Properties, nor any property adjacent to the Properties intended to become a future section of Brockton Manor Subdivision (the applicable date being herein 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 and for each single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Properties of which it is then the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

Section 3. Functions. The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V 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 V.

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: J. Greg Allen and Robert T. Wildman (herein referred to as the "Initial Board"), both of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the By-Laws 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 By-Laws, 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 and Vacancy. Subject to the provisions of Section 2 of this Article V, 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. Subject to the provisions of Section 2 of this Article V 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 V. 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) protection, surveillance and replacement of the Common Areas, 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 Association, 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;
- (b) 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);
- (c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;
- (d) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (e) 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;
- (f) 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;

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- (g) 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;
- (h) 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;
- (i) paying taxes and assessments assessed against and payable with respect to the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and
- (j) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the By-Laws 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 powers include, but are not limited to, the powers:

- (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;

(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 out 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

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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 VI 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. Any real estate taxes or other assessments against the Common Areas shall be paid by the Association and treated as a Common Expense.

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 shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

ARTICLE VII Maintenance and Repair

Section 1. By the Owner. Each Owner shall be responsible for, if the need therefor arises, all maintenance-

repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances and other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 2. By the Association. Maintenance, repairs, replacements and upkeep of the Common Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Association, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

- (a) those portions of the Real Estate, whether or not said portions are part of any of the lots, which are located outside any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Association shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside any perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate;
- (b) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate; and
- (c) any equipment, such as water wells or fountains, installed by Declarant to serve the entire project

to be developed on the Real Estate, whether or not located on Lots.

- (d) the storm water drainage system for the Real Estate, including but not limited to, the maintenance of all lakes, inlets, open ditches, pipes, swales, manholes and detention ponds. The costs and expenses of such maintenance of the storm water drainage system shall be assessed as part of the general assessment against the Owners as provided in the Declaration and shall be secured by a lien against all lots in this subdivision. Sump pumps, gravity drains and other drains serving individual residences on Lots shall outfall only into drainage swales included in the storm water drainage system for Brockton Manor Subdivision.
- (e) all fences, walls, landscaping, screening material, street directories and signs, water wells and irrigation systems and other improvements within the Landscape Easements.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), 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 Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the 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 become a part of the assessment to which such Owner's Lot is subject.

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 deemed as Common Areas for purposes of maintenance, including, but not limited to, access

to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purposes.

ARTICLE VIII
Lake Covenants

Section 1. Each Lake area as shown on the plats of the subdivision shall be owned and controlled as tenants in common by the Owners of Lots proposed to abut the Lake.

Section 2. The Owners of said Lake Lots together with guests in their presence, shall have the exclusive rights to use and enjoyment of such Lake provided that they may not interfere with the drainage system of the subdivision of which the Lakes are a part.

Section 3. Until all Lots abutting the Lake are sold, it shall be the responsibility of the Declarant, its successors and assigns, for the maintenance, repair and upkeep of said Lake.

Section 4. After all Lots abutting the Lake are sold, the co-owners for each Lake shall form an association in which each Lake Lot Owner shall have one vote in the selection of a Board of Managers which shall consist of not less than three nor more than five members. Thereafter, on the first Saturday in March of each calendar year, the voting members shall elect the Board of Managers for the ensuing year to a term commencing April 1st and expiring March 31st.

Section 5. The Board of Managers shall thereafter be responsible for establishing rules and regulations pertaining to Lake usage as well as establishing an annual budget to assure adequate maintenance, upkeep and repair of the Lake property including the easement adjacent thereto for purposes other than maintenance and repair related to the storm water drainage system, which expenses are to be included in the Common Expenses subject to general assessment for all Lots in Brockton Manor. Such budget shall be established annually on or before April 1st of each year for the ensuing twelve (12) month period.

Section 6. Assessments shall be equally paid by each voting member within thirty days from the date of billing, and there shall be a late charge of 2% per month on all delinquent payments.

Section 7. Assessments for Lake maintenance shall be a lien upon the Lots abutting the Lake subordinate only to the lien of a first mortgage, which lien can be enforced by the Board of Managers of any Lake Lot Owner subject to these Lake

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the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shores of such lakes adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations.

ARTICLE IX
Architectural Standards

Nothing, including any fence, deck, dock, 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 Area 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 "Brockton Manor 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 By-Laws. If the By-Laws 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, builders and developers 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 twenty-one (21) 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 approve or disapprove such plans or to request additional information reasonably required within 45 days after submission of all required or requested information, the plans shall be deemed approved.

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. In the case of a variance from set-back and yard size requirements in no event shall the aggregate side yards on any Lot be less than 20 feet or the foundation of any building closer than 6 feet to a Lot line. 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 By-laws.

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.

Section 11. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit.

ARTICLE X
Use Restrictions/Covenants and Regulations

Section 1. 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 2. 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.

Section 3. Signs. No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors, except entry and directional signs installed by Declarant and such signs as may be required by legal proceedings. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Signs advertising property for rent are specifically prohibited. Violation of this sign restriction will result in Fifty Dollars (\$50.00) per day liquidated damages payable to the Declarant until such time as the Association owns and is responsible for the maintenance of the Common Areas, at which time such liquidated damages shall be payable to the Association. The Declarant and/or Association shall approve all signs deemed appropriate by the Committee advertising properties for sale, which signs shall be uniform in design and placed as the Committee shall determine proper.

Section 4. Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Lots. Parking (of automobiles only) is allowed on dedicated streets only when an Owner has a social function and the invited guests will not be able to park on such Owner's Lot. No overnight parking shall be permitted on any dedicated street.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-quarters of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft and boat trailers shall be parked only in enclosed garages. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin

and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties for such period of time as is reasonably necessary to provide service or to make a delivery to a lot. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the By-Laws.

(c) GARAGES and DRIVEWAYS. No dwelling shall have less than a full size 2-car or more than a 3-car attached garage, unless otherwise approved by the Committee. All driveways and vehicle parking areas shall be hard surfaced with either concrete, or an acceptable alternate approved by the Committee and shall be so surfaced from their point of connection with the abutting street to their point of connection with the garage apron. No gravel or stone driveways will be permitted.

Section 5. Sidewalks. Sidewalks shall be constructed as required by the sidewalk plan approved by the Johnson 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.

Section 6. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

Section 7. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats or other usual and common household pets not to exceed a total of two (2) may be permitted on a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or

constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed from the Properties upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a lot be confined on a leash held by a responsible person.

Section 8. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the 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.

Section 9. 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 10. Maintenance of Lots and Improvements. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. No waste shall be committed in any Dwelling or on any Lot. Each Owner shall:

- (1) Mow the Lot at such times as may be reasonably required in order to keep the grass no longer than

five inches and prevent the unsightly growth of vegetation and noxious weeds;

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

Section 11. Landscape Easements. There are strips and areas of ground shown marked "Landscape Easement" 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 fences, walls, landscaping, other screening material, street directories, street signs, water wells and other items 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 Declaration 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 12. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Lot, without the prior written consent of the Board or its designee. Notwithstanding this, the Declarant, its nominee, successors or assigns shall have the right, without obligation, to erect an aerial or satellite

size and number, and in such locations, as the Committee may determine in its sole discretion.

Section 18. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 19. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 20. Provisions Respecting Disposal of Sanitary Waste.

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 Johnson County, Greenwood Sanitation Department, and these Restrictions.

C. Connection Requirements for Sanitary Sewers. All homes shall have sewers directly connected by way of gravity except by the use of lift pumps and/or check valves or connections shall be one foot above the lowest manholes in the Subdivision.

Section 21. Lighting. Except for seasonal Christmas decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights must be approved in accordance with Article IX of this Declaration.

Section 22. Private Water Systems. No private, or semi-private, water supply may be located upon any Lot which is not in compliance with regulations or procedures as provided by the applicable public health agencies, or other civil authority having jurisdiction, approved by the Committee and restricted to use in connection with a sprinkler system or geothermal heating and cooling system.

Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article IX of this Declaration.

design approval. The design of such fence shall conform to county or municipal regulations for such fencing. Use of plantings in the vicinity of the proposed pool may be required to soften the effect of sound and required pool fencing on adjacent properties.

Section 29. Tennis Courts, Racquetball Courts, Paddle Ball Courts, Basketball Goals, Etc. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities will be approved by the Committee only after thorough consideration of the potential effect of such a structure or use in neighboring properties. The Committee will not approve non-baffled lighted courts or facilities. An application for the construction of any such facility will not be considered unless the application is accompanied by an application for an acceptable fence and landscape design approval. It is recommended by the Committee that any such fencing be of an open composition in order to blend in with the surrounding properties and soften the effect on adjacent properties.

All basketball backboards or any other fixed games and play structures shall be located behind the rear foundation line of the main structure and within Lot set-back lines unless otherwise approved by the Committee. The Committee reserves the right to approve or disapprove the location and type of basketball goals.

Section 30. Playground. Any playground or other play areas or equipment furnished by the Association or 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, swing and slide, and tents 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.

Section 31. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article IX of this Declaration.

Section 32. 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 33. Air Cooling Units. Air cooling units or other like utilities that are outside of the residential structure must be located at the side or rear of the home and except as may be permitted by the Committee. No window air conditioning units may be installed on any Lot.

Section 34. Model Homes. No Owner of any Lot shall build or permit the building upon his Lot or any Dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

Section 35. 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 36. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant of a Lot may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent to detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a

trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which such entity owns within the Properties.

Section 17. Sales Offices. To the extent deemed necessary or desirable by Developer, Developer 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 until 180 days following the sale, closing and deed transfer to a lot owner other than Developer of the last lot in the subdivision.

Section 18. 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 19. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Article X shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 20. Diligence in Construction. Every building whose construction on any Lot is begun shall be completed within one hundred eighty days (180) 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 21. Declarant's and the Association's Right to Perform Certain Maintenance. In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements 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 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.

**ARTICLE XI
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 Owner. 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 Owners attending 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 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, however, Lots owned by Declarant shall not be subject to assessment. Immediately following the adoption of the annual budget, each Owner shall be given written 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 full 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. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, 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) or (b) above shall be made by a cash payment by, or refund to, the Owner on 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 X 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.

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 By-Laws 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 nor 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.

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 Common 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 mortgage on real property or as otherwise provided or permitted by law. 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. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit

which are the subject of such action shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. 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 The Indiana National Bank 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 By-Laws, 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).

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, 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 V 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. 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 non-refundable 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 XII
Mortgages

Section 1. Notice to Association. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall 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 By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record 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 By-Laws 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 By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon 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 By-Laws 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 IV hereof.

**ARTICLE XIII
INSURANCE**

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 on 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 defenses 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, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant 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 workmen's compensation 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