

# *Crooked Creek Villages*

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*A Planned Community*

Another  
R. N. Thompson  
Development

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007176 JUL 10 1995  
MARION COUNTY AUDITOR  
JOHN R. VON ARX  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

CROOKED CREEK VILLAGES HOMEOWNERS ASSOCIATION, INC.  
An Indiana Non-Profit Corporation

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND BY-LAWS

ARTICLE I. MEMBERSHIP, FUNCTIONS OF THE CORPORATION, DEFINITIONS

**SECTION 1.1 Functions.** The Corporation has been formed for the purpose of maintaining the value and appearance of the Crooked Creek Villages subdivision; providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Areas; enforcement of the covenants and Architectural Design and Environmental Control of the subdivision for the mutual benefit of all Owners; 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 Association; and to perform such other functions as may be designated under this Declaration.

**SECTION 1.2 Membership in Corporation.** Each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of such Lot.

**SECTION 1.4 Definitions.**

A. "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Crooked Creek Villages Homeowners Association, Inc., as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

B. "Common Area" means the ground designated as "Block" or as "Common Area" upon the Final Plats of the Crooked Creek Villages Subdivision. Block A shall be considered "Limited Common Area" such that, other than the right of any owner to drain storm water into the lake, only the owners of Lots that abut this Lake, their families, guests, and invitees shall have the right to use said Lake, and the abutting Owners may only use the Lake within the rules and regulations set by the Board. In the event that the Plats do not so identify, the Declarant or the Board of Directors shall determine which Blocks are to be General Common Area, Limited Common Area, or part General and part Limited Common Area. The Common Areas of this Subdivision shall be subject to easements for drainage and utilities, as further described and defined herein and in the Plat Covenants.

C. "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common and Limited Common Area, and all sums lawfully assessed against the Members of the Corporation.

D. "Corporation" means Crooked Creek Villages Homeowners Association, Inc., its successors and assigns, a non-profit corporation, whose members shall be the Owners of Lots in the Crooked Creek Villages Subdivision. The terms "Corporation" and "Association" may be used interchangeably to refer to the Crooked Creek Villages Homeowners Association, Inc.

E. "Crooked Creek Villages" shall mean the entire subdivision developed to be developed by Declarant as Crooked Creek Villages. The legal description and overall preliminary plat of the entire Crooked Creek Villages subdivision are attached hereto and incorporated herein as Exhibit "A". Declarant shall have the authority to remove any parcel of property which Declarant owns from this Declaration and from the Crooked Creek

Villages subdivision, by recording a withdrawal with the Recorder of Marion County. Declarant shall also have the authority to revise any section of the preliminary plat so long as such revision does not prohibit ingress or egress of any Lot Owner to their Lot.

F. "Declarant" means L.D.G., Inc. an Indiana Corporation and Stark Development Corporation, an Indiana Corporation, jointly, or its successors and assigns, as developer of the Crooked Creek Villages Subdivision. Land Innovators Company, an Indiana Limited Partnership, is also the developer of a part of Crooked Creek Villages and is included within the definition of "Declarant". The terms "Declarant" and "Developer" may be used interchangeably.

G. "EASEMENTS" within the Crooked Creek Villages Subdivision shall have the following meanings and restrictions:

DRAINAGE & UTILITY EASEMENTS. There are areas of ground on the plats marked "Drainage and Utility Easements" (D & U E), either separately or in combination with other easements. The Utility Easements identified on the Plats are hereby created and reserved for the use of all public and private utility companies (not including transportation companies), and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved: (i) for the use of the Developer, and its successors and assigns during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis, and its contractors, successors and assigns, for access to, maintenance, repair and replacement of such drainage systems. Additional easement rights are created, even if not specifically identified in the Plats, for any entity for whose use a Utility Easement or Drainage Easement is created and reserved, in order to access such easement, to go on any Lot temporarily, to the extent reasonably necessary for the exercise of the rights granted to it by the Easements.

The owner of any Lot in this Subdivision which is subject to a Drainage Easement shall be required to keep the Drainage Easement portion of the Lot free from obstructions so that the surface water drainage will be unimpaired. No permanent structures or fences shall be erected or maintained upon said easements. The Lot Owners shall take and hold title to the Lots subject to the Utility Easements and Drainage Easements herein created and reserved.

I.P.L. EASEMENT. A one hundred (100) foot easement appears on one or more of the plats, marked I.P.L. Easement. This easement is for an electrical power line erected and maintained by the Indianapolis Power & Light Company or its successors and assigns.

LANDSCAPE EASEMENTS. These easements (which may be identified by the initial "L" as in D, U & L E) are for the use and benefit of the Developer and the Homeowners Association for planting, fertilizing, cutting or trimming, and otherwise maintaining trees, shrubs, flowers, grass, walls, fences, mounds and other landscaping, including the installation, use and maintenance of a water

sprinkling system, at the sole discretion of the Developer prior to the sale of the last lot in Crooked Creek Villages and thereafter at the sole discretion of the Homeowners Association.

SANITARY SEWER EASEMENTS. These easements, marked San. Sewer Esmnt., are utility easements which are specially designated for the installation and maintenance of sanitary sewers but should be considered to be additional utility easements.

RESTRICTION ON BUILDING ON EASEMENTS. No Owner, or any other person or entity, may erect any structure, temporary or permanent, upon any Easement, except with the express written consent of the Developer, so long as Developer owns any lots in any section of Crooked Creek Villages, and of the Homeowners Association thereafter.

COOPER ROAD RIGHT OF WAY. The Association shall be required to maintain and cut the grass throughout the Cooper Road Right of Way, unless the City of Indianapolis or other municipal governmental entity does so or prevents the Association from doing so, or until the road is constructed on this Right of Way.

H. "Mortgagee" means the holder of a first mortgage lien on a Lot.

I. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

J. "Subdivision" or "Tract" means the various Sections of Crooked Creek Villages West and of Crooked Creek Villages East, as they are now filed or as hereafter filed with the Office of the Recorder of Marion County, Indiana.

## ARTICLE II. OWNERSHIP AND USE OF THE COMMON AREAS

**SECTION 2.1 Ownership.** The Common Area shall be owned by the Corporation, and shall be held for the use and enjoyment of the Members (except as limited in the case of Limited Common Area), which right shall pass with title to every Lot, subject to the provisions of this Declaration.

**SECTION 2.2 Easement for Utilities and Public and Quasi Public Vehicles.** All public and quasi public vehicles including, but not limited to, police, fire and other emergency vehicles, public works, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Areas and the designated easements in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephone, electricity and cable television on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved on the Plat or as thereafter may be approved by the Board of Directors.

**SECTION 2.3 Easement for Association.** An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Areas and Easements to perform its duties.

**SECTION 2.4 Water Retention Lake.** One or more water retention areas, identified as a Lake, or as a part of a "Block", shall be a part of the Common Area of the Association. Such Retention Lakes shall be for the purpose of accepting and storing storm water and drainage from the Tract and surrounding areas. Neither the Declarant nor the Association shall be responsible for assuring or maintaining any minimum or maximum level of water in such areas. The Association, through its Board of Directors, shall be

obligated to maintain the Lakes and shall control access and recreational use thereof.

### ARTICLE III. CLASSES OF MEMBERSHIP

**SECTION 3.1 Voting Rights.** The Corporation shall have two class of membership. Class A members shall be all Owners of Lots in the Crooked Creek Villages subdivision other than the Declarant. The Declarant shall be a Class B Owner of each Lot titled in its name.

**SECTION 3.2 Class A Members.** Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner. When more than one person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall cumulatively have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. No vote may be divided.

**SECTION 3.3 Class B Member.** The Declarant, Land Innovators Company and its successors and assigns, shall be the only Class B Member of the Association. The Class B Member shall have five (5) votes for each Lot identified on the Preliminary Plat attached hereto as Exhibit "B", of which it is the Owner.

### ARTICLE IV. INITIAL MANAGEMENT AND CONTROL BY DEVELOPER

**SECTION 4.1 Definition of "Authority Transfer Date".** Class B membership shall terminate and become converted to Class A membership (the "Authority Transfer Date"), upon the happening of the earliest of the following:

- (a) when the total of all Class A votes exceed the total of all Class B votes; or
- (b) January 31, 2010; or
- (c) when, in its discretion, the Declarant so determines.

**SECTION 4.2 The Board of Directors.** Prior to the Authority Transfer Date as defined above, the Declarant shall appoint all members to the Board of Directors of the Corporation and shall have full authority to establish rules and regulations for the Corporation and for the Subdivision. Directors appointed by the Declarant shall serve at the will of the Declarant and shall be considered Owners of the Corporation only for the purpose of serving on the Board. The Board of Directors, prior to the Authority Transfer Date, shall not be required to hold Meetings, and if Meetings are held, they shall not be required to be held in public, and notice to other Owners shall not be required.

**SECTION 4.3 Annual Dues.** Prior to the Authority Transfer Date, the Declarant shall establish the amount and payment terms of Annual Dues. Prior to the Authority Transfer Date, the Annual Dues, including management fees and contributions towards the replacement reserve fund, shall not exceed Two Hundred Dollars (\$200) per year in the first year after this Declaration is filed, with increases of not more than twenty percent (20%) per year, determined cumulatively from the first year forward, thereafter.

**SECTION 4.4 Declarant's Obligation to Pay Assessments.** Prior to the Authority Transfer Date, neither the Declarant nor any builder shall be obligated to pay any management fee, contribution towards the replacement reserve fund for the Corporation, or any special assessment of any kind or nature.

**SECTION 4.5 The Architectural Design and Environmental Control Committee.** Prior to the sale of the last Lot in the Crooked Creek Villages subdivision, including any additional Sections recorded by the Declarant, the

Declarant shall appoint all members of the Architectural Design and Environmental Control Committee for Crooked Creek Villages East and for Crooked Creek Villages West.

**SECTION 4.6** 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 Corporation, until the Authority Transfer Date. Declarant may, at its option, engage the services of 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.

**SECTION 4.7** Declarant's Authority to Add Additional Sections. The Declarant may, at any time prior to the Control Release Date established in Section 4.1 above, record additional Sections of Crooked Creek Villages, which Sections shall automatically be subject to this Declaration and the Owners of Lots of such additional Sections shall automatically become members of the Association. In the event that additional Sections are added by Declarant, the votes attributable to the Lots in such new Section or Sections shall be counted for purposes of voting rights and for all other purposes from the date of the recording of the Plat for such Section.

#### ARTICLE V. OWNERS MEETINGS

**SECTION 5.1** Annual Meeting. The annual meeting of the Owners shall be held on the second Wednesday in March in each year, at 7:00 o'clock P.M., beginning on the first annual meeting date after the Authority Transfer Date, for the purpose of electing directors, approving an Annual Budget and Regular Assessment and for the transaction of such other business as may come before the meeting. If the meeting can not be conducted or concluded on this day, the annual meeting shall be held on the next succeeding Wednesday, or as soon thereafter as the meeting may practically be held.

**SECTION 5.2** Special Meetings. Special meetings of the Owners may be called for any legal purpose by the President or by the Board of Directors, and shall be called by the President, after the Authority Transfer Date, at the request of at least twenty percent (20%) of the Owners.

**SECTION 5.3** Place of Meeting. The Board of Directors shall designate the place of the meeting. The Board may designate that any meeting of Owners take place at any suitable location within five (5) miles of the Crooked Creek Villages subdivision.

**SECTION 5.4** Notice of Meeting. Written notice, stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered to each Owner not less than ten (10) days before the date of the meeting, either personally or by mail, by or at the direction of the President. Unless an Owner provides the Secretary of the Corporation with written instructions to the contrary, notice may be sent or delivered to the address of the Lot. Notice contained in a newsletter or other general correspondence shall meet the notice requirement of this section, if it is sent or delivered to each Owner as provided herein.

**SECTION 5.5** Quorum. A majority of Owners, represented in person or by proxy, shall constitute a quorum at a meeting of Owners. In the event that a quorum is not present, the meeting may be adjourned to another date and time, with or without further notice, as determined by the Board.

**SECTION 5.6** Proxies. At all meetings of Owners, an Owner may vote in person or by written proxy, executed by the Owner or by a duly authorized

attorney-in-fact. Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting. Every proxy shall be specific for an Annual or Special Meeting of Owners, or its adjourned date, unless otherwise provided in the proxy.

**SECTION 5.7 Cumulative Voting.** Cumulative voting shall not be permitted. Each Owner may only cast one vote for any candidate for any Office, even though multiple positions are open for such Office.

**SECTION 5.8 Voting by Mail-In Ballot.** The Board may determine that one or more issues be voted upon by mail-in ballot, either in conjunction with an Annual or Special Meeting or as a substitute for the holding of a Meeting. In the event that the Board elects to permit Main-in ballots, ballots shall be mailed or delivered to each Owner at least 14 days prior to the deadline for voting.

**SECTION 5.9 Qualification of Directors.** 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.

#### ARTICLE VI. BOARD OF DIRECTORS

**SECTION 6.1 General Powers.** The business and affairs of the corporation shall be managed by its Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he or she is an Owner as defined herein.

**SECTION 6.2 Number, Tenure and Qualifications.** The initial number of directors of the corporation shall be three (3). The corporation may have not less than three directors or may have up to seven directors. After the Authority Transfer Date, each director shall hold office until the next annual meeting of Owners and until his or her successor shall have been elected and qualified. Any increase or decrease in the number of Directors shall be approved by the Owners.

**SECTION 6.3 Regular Meetings.** The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings to be held without notice, so long as the first such meeting is with notice, and the notice informs all directors of the resolution.

**SECTION 6.4 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any director. The person calling the special meeting may fix the time for holding such meeting of the Board of Directors, and, unless consented to by all Directors, the special meeting shall be held within five miles of the Crooked Creek Villages subdivision.

**SECTION 6.5 Notice.** Notice of any special meeting shall be given at least three days in advance by written notice delivered personally or by telegram, or at least seven days in advance if notice is mailed. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

**SECTION 6.6 Quorum.** A least fifty percent (50%) of the number of directors eligible to attend and vote shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

**SECTION 6.7 Manner of Acting.** The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**SECTION 6.8 Action Without A Meeting.** Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent, in writing, setting forth the action to be taken shall be signed by all of the Directors.

**SECTION 6.9 Term of Office and Vacancy.** Each member of the Board of Directors shall be elected for a term of three (3) years, which terms shall be staggered so that the terms of approximately one-third (1/3) of the members of the Board shall expire annually. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Unless a Director is removed by the Owners under Section 6.10, any vacancy occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board. The Director filling a vacancy shall serve until the next annual meeting of the Owners and until his successor is elected and qualified.

**SECTION 6.10 Removal of Directors.** A Director may be removed with or without cause by a majority vote of the Owners, at a meeting duly called for such purpose. In such case, his successor shall be elected at the same meeting, to serve until the next annual meeting.

**SECTION 6.11 Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement of the Common Area and the collection and disbursement of the Common Expenses. The Board shall, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The management agreement shall be for a term of three (3) years or less and shall terminate upon ninety (90) days written notice by either party.

**SECTION 6.12 Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish their duties. These powers include, but are not limited to, the power:

(1) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations (in addition to those set forth in this Declaration) with respect to use, occupancy, operation and enjoyment of the Common Area as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners; and

(2) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Crooked Creek Villages.

**SECTION 6.13 Limitation on Board Action.** The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$3,500.00, which sum shall be increased annually by the increase, if any, in the Consumer Price Index (CPI) or its successor index, without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(1) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(2) contracts and expenditures expressly approved by the Owners in the annual budget; and

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

**SECTION 6.14 Compensation.** No Director shall receive any compensation for his services without the express approval of the Owners. The Managing Agent, if one is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.



**SECTION 6.15 Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify, hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of actions or contracts by the Board on behalf of the Corporation, unless any such action or contract shall have been made in bad faith, or as the result of willful misconduct or gross negligence.

**SECTION 6.16 Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorney's 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 to matters in which it shall be adjudged in such action, suit or proceeding that such Director is liable for bad faith, gross negligence or willful misconduct in the performance of his duties. The Corporation shall also reimburse 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, bad faith or willful 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 gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation 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 Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**SECTION 6.17 Non-Liability of Officers.** The provisions of Sections 6.15 and 6.16 shall also apply to Officers of the Corporation who are not also Directors.

**SECTION 6.18 Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent, the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to one fourth of the aggregate annual assessments on all Lots) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

## ARTICLE VII. OFFICERS

**SECTION 7.1 Number.** The officers of the corporation shall be a President, a Secretary and a Treasurer, each of whom shall be elected by the Board of Directors. The corporation may also have one or more Vice

Presidents. Such other officers and assistant officers, who need not be Directors, may be elected or appointed by the Board of Directors.

**SECTION 7.2 Election and Term of Office.** The officers of the corporation shall be elected annually by the Board of Directors, after the Authority Transfer Date, at the first meeting of the Board held after each annual meeting of the Owners. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor shall have been duly elected and qualified or until their death, resignation or removal as hereinafter provided.

**SECTION 7.3 Removal.** Any officer or agent may be removed by the Board of Directors whenever, in its judgment, the best interests of the corporation will be served thereby.

**SECTION 7.4 President.** The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall supervise and direct all of the business and affairs of the corporation. The President shall, when present, preside at all meetings of the Owners and of the Board of Directors. The President shall, in general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

**SECTION 7.5 Vice President.** Vice Presidents of the Corporation shall fulfill such duties as the Board of Directors or the President shall direct. A Vice President shall not serve in the capacity of the President, unless the President so directs in writing.

**SECTION 7.6 Secretary.** The Secretary shall: (a) keep the minutes of the proceedings of the Owners and of the Board of Directors in the corporate minute book; (b) see that all notices are duly given in accordance with the provisions herein or as required by law; (c) be custodian of the corporate records; (d) keep a register of the post office address of each Owner, as furnished by the Owner and of each Mortgagee, as furnished by the Owner or Mortgagee; and (e) in general, perform all duties incident to the office of Secretary and such other duties as may be assigned by the President or by the Board of Directors.

**SECTION 7.7 Treasurer.** The Treasurer shall: (a) have charge and custody of, and be responsible for, all funds of the corporation; (b) receive and give receipts for monies due and payable to the corporation and deposit all such monies in the name of the corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors; and (c) in general, perform all of the duties incident to the office of Treasurer and such other duties as are assigned by the President or by the Board of Directors.

#### ARTICLE VIII. CONTRACTS, LOANS, CHECKS AND DEPOSITS

**SECTION 8.1 Contracts.** The Board of Directors may authorize, by resolution, any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

**SECTION 8.2 Loans.** No loans shall be contracted on behalf of the corporation and no indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**SECTION 8.3 Checks and Drafts.** All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time is determined by resolution of the Board of Directors.

**SECTION 8.4 Deposits.** All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

#### ARTICLE IX. TAXES, UTILITIES AND MAINTENANCE

**SECTION 9.1 Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot, and paid by the title owner of each Lot. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

**SECTION 9.2 Maintenance, Repairs and Replacements.** Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

**SECTION 9.3 Maintenance of Individual Lots.** Each owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition with an appearance which is complementary to the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the Crooked Creek Villages subdivision, the Corporation may perform any work necessary and charge the Owner thereof for such cost, which shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

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

**SECTION 9.4 Damage to or Abuse of Common Areas.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, invitee or other occupant or visitor of the Owner, damage is caused to Common Areas, or if maintenance or repairs is required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Corporation.

#### ARTICLE X. ARCHITECTURAL CONTROL

**SECTION 10.1 Purposes.** The Architectural Design and Environmental Control Committee (also referred to herein as the "Architectural Control Committee" or simply as the "Committee") shall regulate the external design, appearance, use and location of improvements on the Real Estate in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

**SECTION 10.2 Architectural Control Guidelines.** The Architectural Control Committee shall have the authority to establish, amend and revoke Architectural Control Guidelines for the Subdivision and the Association, which shall be binding upon all Owners and all others, who in any way use, occupy or benefit from the Subdivision, or any part thereof. The Architectural Control Guidelines shall not be inconsistent with any covenant or provision of this Declaration or in the Plat Covenants and shall not be retroactively applied. The initial Architectural Control Guidelines are attached for convenience only and are not incorporated herein. The Architectural Control Guidelines may be amended by the Architectural Design

and Environmental Control Committee, at any time and from time to time, so long as notice of any such amendment is given to all Lot Owners. The Architectural Control Guidelines may be enforced by the Architectural Design and Environmental Control Committee or by the Board of Directors.

**SECTION 10.3 Architectural Design and Environmental Control.** No structure or improvement -- including but not limited to residences, accessory structures, landscaping, fences, walls, mounds, ponds, pools, satellite dishes, antenna, patios, basketball goals and other permanent structures for sports and recreation -- shall be erected, placed and altered on any Lot in this Subdivision until the building plans, specifications and plot plan showing the location, materials, and appearance of the planned improvement have been submitted to and approved by as the Architectural Design and Environmental Control Committee, regarding conformity and harmony of external design, topography, and finished ground elevations. The destruction of trees and vegetation and any other such matter as may affect the environment and ecology of this Subdivision shall also be approved in advance by the Committee.

**SECTION 10.4 Composition of the Committee.** The Committee will be composed of three or more members. All members of the Committee, including replacement members, will be appointed by and will serve at the will of the Declarant, until the first to occur of the following:

- (1) The day after the Declarant transfers title to the last Lot of Crooked Creek Villages, identified on Exhibit "B" as amended by any withdrawal or modification of the Preliminary Plat, or
- (2) 30 days after Declarant notifies the Lot owners of its intention to transfer authority for Architectural Control to the Owners.

Within thirty days after the Declarant notifies the Owners of the sale of its last Lot or of its intention to transfer authority for Architectural Control to the Owners, the Board of Directors of the Crooked Creek Villages Homeowners Association, Inc., shall appoint three or more Lot Owners, to serve on the Committee.

UNTIL SUCH TIME, THE DECLARANT SHALL HAVE COMPLETE AUTHORITY AND CONTROL OVER ARCHITECTURAL AND ENVIRONMENTAL DESIGN. During the time that the Declarant has Architectural Control, a majority of the Committee members may designate a representative to evaluate and approve specific applications, so that the Committee is not required to meet to review each application.

**SECTION 10.5 Written Approval.** The Committee's approval or disapproval of any properly submitted application shall be in writing. In the event that written approval is not received from the Committee within thirty (30) days from the date of submission of a completed application and any additional documentation requested by the Committee, and so long as the request is not prohibited by the Architectural Control Guidelines then in effect or the plat covenants or this Declaration, it shall be deemed that the Committee has approved the presented plan.

**SECTION 10.6 Additional Approvals.** Under no circumstances shall approval of the Architectural Design and Environmental Control Committee be deemed to replace any required governmental approval or be deemed to constitute a representation or assurance by the Committee that the planned structure or improvement meets the requirements of any law, regulation or ordinance or meets any structural or safety requirement or standard.

**SECTION 10.7 Alterations Without Approval.** The Architectural Control Committee and/or the Board of Directors shall have the right and authority to require the removal of any improvement which has been made without receiving the approval of the Committee, including injunctive relief, and recovery of damages, reasonable attorney fees, and costs.

**SECTION 10.8 Miscellaneous Provisions.**

- a. The Committee's approval of, or failure to object to, a requested improvement for one Lot shall not prevent it from

objecting to a similar improvement for another Lot in the Subdivision, if it deems, in its sole discretion, that the requested improvement would be detrimental to the Subdivision or the other Lot Owners.

b. Neither the members of the Committee nor its designated representatives will be entitled to any compensation for services performed on behalf of the Committee.

c. Subsequent to the transfer of architectural control from the Declarant to the Association, a decision of the Architectural Review Committee may be appealed to the Board of Directors by the Applicant or by an adjoining Lot Owner, which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

d. The Architectural Review Committee may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Committee as may be delegated to them.

e. The Association may not waive or abandon these procedures for regulating and enforcing architectural design and environmental control without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

#### ARTICLE XI. ASSESSMENTS

**SECTION 11.1 Annual Accounting.** A financial statement and annual report of the Corporation shall be prepared annually, after the close of each fiscal year and prior to the date of the next annual meeting, by a certified public accountant or CPA firm then servicing the Association, which shall show all income and receipts and all expenses incurred and paid during the preceding fiscal year. This financial statement and annual report shall be prepared under the direction of the Board and distributed to each Owner prior to the next Annual Meeting.

**SECTION 11.2 Proposed Annual Budget.** Annually, at or prior to the time the notice of the annual meeting is sent, the Board of Directors shall submit to each Owner a proposed Annual Budget and Regular Assessment, estimating the total amount of the Common Expenses for the upcoming fiscal year. The Annual Budget may include an amount for the Replacement Reserve Fund for capital expenditures and replacement and repair of the Common Area, which fund shall not be used for usual and ordinary repair expenses. Once an Annual Budget is adopted, it shall be the basis for the Regular Assessment for the upcoming fiscal year.

In no event shall the annual meeting of the Owners be adjourned until an Annual Budget and Regular Assessment are approved and adopted. If the Owners have not approved an annual budget, whether or not due to failure or delay of the Board of Directors, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon up to one hundred and twenty percent (120%) of such last approved budget, as a temporary budget.

The Annual Budget, the Regular Assessments, and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

**SECTION 11.3 Regular Assessments.** The Annual Budget shall contain a proposed Regular Assessment against each Lot, which shall be the same amount for each Lot. Following the adoption of the Annual Budget, each Owner shall be given written notice of the assessment (herein called the "Regular Assessment").

In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, following adoption of the final Annual Budget by the Owners, a revised statement shall be sent to each Owner

indicating the additional amount owed or the credit for the next Regular Assessment.

The Regular Assessment against each Lot shall be paid to the Board in advance, in a single installment on or before the first day of each fiscal year, or as otherwise determined by the Board. The Board may elect to allow payment of assessments quarterly or semi-annually, in advance, and may require an additional fee to be charged for the privilege of paying quarterly or semi-annually.

The Regular Assessment for the current fiscal year shall become a lien on each Lot as of the first day of the Corporation's fiscal year, even though based upon a Temporary Budget. If an Owner has paid an assessment based upon a Temporary Budget, and conveys or transfers his Lot before the Annual Budget and Regular Assessment are determined, both the Owner and the successor Owner shall be jointly and severally liable for any balance owed for the Regular Assessment.

**SECTION 11.4 Special Assessments.** From time to time, Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. The Board of Directors, with approval of a majority of the Owners at any Regular or Special Meeting of the Owners or by mail-in ballot, shall have the right, power and authority to impose special assessments, upon each Lot in equal shares (herein called "Special Assessment"), which shall become a lien on each Lot.

**Section 11.5 Initial Working Capital and Start-Up Fund.** Upon the closing of the initial conveyance of each Lot to an Owner, other than a Builder, the purchaser of such Lot shall pay to the Corporation, in addition to any other amounts then owed or due to the Corporation, as a contribution to its working capital and start-up expenses, an amount equal to one-sixth (1/6th) of the then current annual Base 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 Corporation with respect to such Lot. Such working capital and start-up fund shall be held and used by the Corporation for payment of, or reimbursement to Declarant for advances to the Association, initial and set-up expenses, contributions to the reserve fund, or to acquire additional equipment or services deemed necessary by the Board.

**SECTION 11.6 Failure of Owner to Pay Assessments.** Each Owner shall be personally liable for the payment of all Regular and Special Assessments. If any Owner shall fail, refuse or neglect to pay any Regular Assessment or Special Assessment when due, a late charge of ten percent (10%) of the unpaid assessment amount shall be added to the balance owed, plus interest of one and three fourths percent (1 3/4%) per month beginning thirty (30) days after the date due, and the following additional provisions shall apply:

(1) A lien for any and all unpaid assessments on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law.

(2) The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

(3) Where the Owner constitutes more than one person, the liability of such persons shall be joint and several.

(4) The Owner and any adult occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment;

(5) The Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect any rentals for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments.

**SECTION 11.7 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any

first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE XII. MORTGAGEES

**SECTION 12.1 Notice to Corporation.** Any Mortgagee who places a first mortgage lien upon an Owner's Lot, or the Owner, may notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and its address shall be maintained by the Secretary. Any notice required to be given to the Mortgagee pursuant to the terms of this Declaration shall be deemed effectively given if mailed to such Mortgagee at such address. 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, shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

**SECTION 12.2 Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Article XI hereof.

**SECTION 12.3 Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums.** Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and, (2) to pay any overdue premiums on hazard insurance for the Association or to secure new hazard insurance for the Association on the lapse of a policy. Any Mortgagee making such payment shall be immediately owed reimbursement by the Corporation.

**SECTION 12.4 Notice of Condemnation or Casualty Loss.** Mortgagees shall be timely notified of any condemnation loss which affects a material portion of the Crooked Creek Villages Subdivision or any Lot upon which the Mortgagee has an interest. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

**SECTION 12.5 Notice to Insurers and Guarantors.** Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

#### ARTICLE XIII. INSURANCE

**SECTION 13.1 Casualty Insurance.** The Corporation shall purchase a casualty insurance policy affording fire and extended coverage, insuring the



Corporation's improvements within the Common Areas and Easements for the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. Such policy shall (to the extent obtainable) contain provisions that the insurer waives its right to subrogation against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests.

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

**SECTION 13.2 Public Liability Insurance.** The Corporation shall also purchase a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but not less than \$1,000,000, arising out of a single occurrence, for bodily injury or death and for property damage. Such policy shall cover the Corporation, the Board of Directors, any committee or division of the Corporation or Board, any Managing Agent, and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

**SECTION 13.3 Other Insurance.** The Corporation shall obtain any other insurance required by law and may purchase such other insurance as the Board of Directors from time to time deems necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation.

**SECTION 13.4 General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. If available, the policies shall contain an endorsement that it shall not be terminated or substantially modified without at least ten days prior written notice to Mortgagees and to the Corporation. Written notice of any insurance obtained by the Corporation and of any subsequent changes or termination thereof shall be promptly furnished by the Board to each Owner or mortgagee whose interest may be affected thereby. Except as otherwise provided in Article XII, notice required under this section shall be sufficient if it is published as a part of a general newsletter and mailed or delivered within sixty days.

The Board of Directors shall be responsible for reviewing, at least every two years, the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance shall be paid to the Association, as the insurance trustee for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Board of Directors, in accordance with the provisions of this Declaration. 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 Corporation.

**SECTION 13.5 Insurance by Owners.** Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.



#### ARTICLE XIV. LOSS TO COMMON AREAS

**SECTION 14.1 Restoration of Common Area.** In the event of damage to or destruction of any of structure or improvement in the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction, and the balance shall be paid first from the reserve account and second, as a Common Expense.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture, however restoration of landscaping shall not be required.

#### ARTICLE XV. COVENANTS AND RESTRICTIONS

**SECTION 15.1** The following covenants and restrictions on the use and enjoyment of the Lots, Homes and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. If a conflict exists between the covenants contained in the Plat and those of this Declaration, the covenants in this Declaration shall prevail. Present or future owners of the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages and reasonable attorney fees resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

A. All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.

B. All residences are required to have an attached garage which will accommodate one or more automobiles. Many residences will be required, by the covenants recorded with the plat for their section, to have an attached garage which will accommodate two or more automobiles.

C. Each driveway in this Subdivision shall be of concrete or asphalt material with no additional parking permitted on a Lot other than the existing driveway.

D. No inoperative or unlicensed vehicle shall be parked or repaired anywhere on the Subdivision, including on any Lot or on the driveway thereof. No camper, trailer, mobile home, boat, truck or school bus may be parked in the Subdivision, including on any Lot or on the driveway thereof, except:

1. Personal automobiles, vans and pick-up trucks (not larger than 3/4 ton) may, subject to rules and regulations to be established in the Declaration of Covenants or by the Board of Directors, be parked on a private driveway or on the public street, and

2. A camper, trailer, mobile home, or boat may be stored in an enclosed garage of average residential proportions.

E. Garbage and trash shall be kept in approved containers, kept in a clean and sanitary condition, and kept in a location which is not visible from the street, except on collection day. No Lot shall be used or maintained as a dumping ground for rubbish or other waste materials.

F. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance or increase in insurance to the Association or to any other Owner, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

G. No noxious or offensive activity or trade shall be permitted on any Lot or elsewhere within this Subdivision nor shall anything be done which may become a nuisance, annoyance or health or safety risk to other Owners. Included within this restriction upon nuisances are excessive or obnoxious noise, odor, or light. The Board of Directors' determination as to what is a nuisance shall be conclusive.

H. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Committee.

I. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Tract within ten (10) days after written notice from the Board to the respective Owner to do so.

J. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons or excessive amounts of light.

K. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any street or any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

L. No water wells shall be drilled on any of the Lots, without prior approval of the Board, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots, without the approval of the Board and of the governing public health agency or other civil authority.

M. No industry, trade, or other commercial or religious activity, educational or otherwise, whether designed for profit, altruism or otherwise, shall be conducted, practiced or permitted upon any Lot or elsewhere on the Tract, except within such rules and regulations as are established by the Board, except that an Owner or occupant resident on a Lot may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside on the Real Estate or involve door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined by the sole discretion of the Board.

N. No "for sale", "for rent", "garage sale" or other signs for any purpose shall be placed upon any common area or upon any Lot other than the Lot which is for sale, for rent or upon which the garage sale will be held,

without the express consent of the Board. Any "for sale", "for rent", "garage sale" or other yard signs, whether placed on any lot or with the Board's consent placed in the common areas, shall be less than 45" in height and less than 36" in width. No more than one sign may be placed on any Lot, without the prior consent of the Board. No banners or signs shall be hung from any home or elsewhere on any Lot for more than one week, without the prior consent of the Board.

O. All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common area.

P. No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, mini bikes, or mopeds shall be permitted, parked or stored anywhere within the Tract except as otherwise specifically permitted by the Board. No repair work shall be done on the Tract on any vehicles, including passenger automobiles.

Q. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with written permission from the Board. No Lot may be used for growing crops, except within the size and location guidelines established by the Board.

R. Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

S. No boating, swimming, or private dock facilities shall be permitted on the Lake, without the approval of the Board of Directors.

T. No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

U. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration, shall be a default under the lease.

V. Diligence in Construction. Every building whose construction or placement on any Lot is begun shall be completed within twelve (12) months after the beginning of such construction or placement. Construction of a residence on any lot acquired from Declarant must commence within twelve (12) months of the date Declarant transfers title to such Lot. Declarant hereby retains an option to purchase any lot upon which construction has not commenced within twelve (12) months at the same price Declarant sold such Lot. The time for commencement of construction may be extended by Declarant if in its sole discretion, the circumstances warrant such extension. 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.

## ARTICLE XVI. AMENDMENT OF DECLARATION

**SECTION 16.1 General Amendments.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

(3) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and

held in accordance with the provisions of the By-Laws.

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

**SECTION 16.2 Special Amendments**. No amendment to this Declaration shall be adopted which changes: (a) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same; or (2) the provisions of this Declaration with respect to casualty insurance or fidelity bonds to be maintained by the Corporation; or (3) the provisions of this Declaration with respect to reconstruction or repair of the Common Area in the event of Fire or any other casualty or disaster; or (4) the provisions of this Declaration establishing the Architectural Review Committee and providing for its functions; or (5) the provisions of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

**SECTION 16.3 Amendments by Declarant Only**. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the Declarant no longer hold or controls title to any part or portion of the Tract.

**SECTION 16.4 Amendment Prior to the Applicable Date**. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

**SECTION 16.5 Recording**. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

**SECTION 16.6 Failure of Mortgagee to Respond**. Any Mortgagee who receives a written request to approve an amendment and fails to give a

negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

#### ARTICLE XVII. MISCELLANEOUS PROVISIONS

**SECTION 17.1 Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of any Lot shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that such provisions are accepted and agreed to by such Owner, tenant or occupant. All such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons or other legal entities who may occupy, use, enjoy or control a Lot or any part of the Tract shall be subject to the Declaration, the Articles of Incorporation, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

**SECTION 17.2 Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or of the Common Area.

**SECTION 17.3 Costs and Attorney's Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorney's fees incurred in connection with such default or failure.

**SECTION 17.4 Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses, whether by Regular Assessment or by Special Assessment, by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

**SECTION 17.5 Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Rules and Regulations adopted by the Board, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Rules and Regulations, and each shall be enforced to the greatest extent permitted by law.

**SECTION 17.6 Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

**SECTION 17.7 Interpretation.** The captions and titles of the various articles and sections of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**SECTION 17.8 The Plat.** The initial Plats of Crooked Creek Villages are incorporated into this Declaration by reference and have been filed in the office of the Recorder of Marion County, Indiana, as follows:

**Crooked Creek Villages West:**

Section I, recorded August 27, 1992 as Instrument No. 92-0112848;

Section II, recorded August 30, 1993 as Instrument No. 93-0125171;

Section III, recorded May 27, 1994 as Instrument No. 94-0084519;

Section IV, recorded May 26, 1995 as Instrument No. 95-0060596; and

**Crooked Creek Villages East:**

Section 1, recorded May 26, 1995 as Instrument No. 95-0060597.

Other Sections may be added by Declarant, as described herein.

IN WITNESS WHEREOF, L.D.G., Inc. and Stark Development Corporation, being duly authorized as the sole owners of the Real Estate, have hereunto executed this Declaration as of the 17th day of May, 1995.

L.D.G., Inc.

STARK DEVELOPMENT CORPORATION

By: R.N. Thompson  
R.N. Thompson, President

By: B.A. Guntra  
B.A. Guntra, Vice President

Land Innovators Company,  
an Indiana Limited Partnership

By: R.N. Thompson  
R.N. Thompson, General Partner

STATE OF INDIANA )  
                                  )SS:  
COUNTY OF MARION )

Before me, a Notary Public, personally appeared R.N. Thompson, President of L.D.G., Inc., a corporation organized and existing under the laws of the State of Indiana, and acknowledged the execution of the foregoing Declaration for and on behalf of said Corporation, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 17th day of May, 1995.

DAVID M. COMPTON  
Notary Public

[Signature]  
Printed


My Commission Expires: June 23, 1997

My County of Residence: HAMILTON

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public, personally appeared B.A. Gunstra, Vice President of Stark Development Corporation, a corporation organized and existing under the laws of the State of Indiana, and acknowledged the execution of the foregoing Declaration for and on behalf of said Corporation, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 17th day of MAY, 1995.

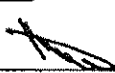
  
\_\_\_\_\_  
Notary Public  
DAVID M. COMPTON  
Printed

My Commission Expires: June 23, 1997  
My County of Residence: HAMILTON

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public, personally appeared R.N. Thompson, General Partnery of Land Innovators Company, a Limited Partnership organized and existing under the laws of the State of Indiana, and acknowledged the execution of the foregoing Declaration for and on behalf of said Partnership, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 17th day of MAY, 1995.

  
\_\_\_\_\_  
Notary Public  
DAVID M. COMPTON  
Printed

My Commission Expires: June 23, 1997  
My County of Residence: HAMILTON

This instrument was prepared by William T. Rosenbaum, Attorney at Law, 1901 Broad Ripple Avenue, Indianapolis, IN 46220. (317) 259-6600

LEGAL DESCRIPTION

Part of the West Half of Section 32, and part of the Southwest Quarter of Section 29, both in Township 17 North, Range 3 East of the Second Principal Meridian, Pike Township, Marion County, Indiana and described as follows:

Beginning at the Southeast corner of the Southwest Quarter of said Section 32; thence North 01 degrees 11 minutes 32 seconds East (an assumed bearing) along the East line of said Southwest Quarter a distance of 2862.40 feet to the center of said Section 32;  
thence North 01 degrees 11 minutes 32 seconds East along the East line of the Northwest Quarter of said Section 32, a distance of 1331.51 feet to the Southeast corner of the Northeast Quarter of the Northwest Quarter of said Section 32;  
thence North 89 degrees 43 minutes 00 seconds West along the South line of the Northeast Quarter of the Northwest Quarter of said Section 32 a distance of 1161.88 feet to a point 179.07 feet east of the West line of said quarter-quarter section;  
thence North 01 degrees 18 minutes 40 seconds East parallel with and 179.07 feet east of said west line 1419.20 feet into aforesaid Section 29 to the centerline of 71st Street;  
thence South 89 degrees 10 minutes 48 seconds West along the centerline of said 71st Street 193.27 feet;  
thence South 01 degrees 18 minutes 40 seconds West along the East line of the West Half of the Northwest Quarter of Section 32 and said East line projected into said Section 29, a distance of 1017.95 feet to the Southeast corner of a tract of land conveyed to the Augusta Christian Church by Deed and recorded as Inst. No. 87-0105 in the Office of the Marion County Recorder;  
thence North 89 degrees 13 minutes 28 seconds West along the south line of said Augusta Christian Church 529.01 feet to the Southwest corner of said Church tract;  
thence North 01 degrees 18 minutes 40 seconds East along the West line of said Church tract 997.40 feet to the North line of the Northwest Quarter of said Section 32;  
thence North 89 degrees 55 minutes 01 seconds West along said North line 811.72 feet to the Northwest corner of said Northwest Quarter;  
thence South 01 degrees 19 minutes 15 seconds West along the West line of said Northwest Quarter a distance of 2870.17 feet to the West Quarter corner of said Section 32;  
thence South 00 degrees 58 minutes 11 seconds West along the West line of the Southwest Quarter of said Section 32, a distance of 1994.15 feet to a point North 00 degrees 58 minutes 11 seconds East 873.50 feet from the Southwest corner of said Southwest Quarter, said point being the Northwest corner of a tract of land conveyed to Paul A. Hufnagel and recorded as Inst. No. 88-01810 in the Office of the Marion County Recorder;  
thence South 90 degrees 00 minutes 00 seconds East along the North line of said Hufnagel tract 549.75 feet;  
thence South 00 degrees 58 minutes 11 seconds West along the East line of said Hufnagel tract and along the East line of a tract of land conveyed to Gary and Karin Eastham and recorded as Inst. No. 88-12110 in the Office of the Marion County Recorder a distance of 373.50 to the Northwest corner of a tract of land conveyed to Ray and Carolyn Johnson and recorded as Inst. No. 87-1382 in the Office of the Marion County Recorder;  
thence South 90 degrees 00 minutes 00 seconds East along the North line of said Johnson tract 105.15 feet to the northeast corner thereof;  
thence South 00 degrees 58 minutes 11 seconds West along the East line of said Johnson tract 300.00 feet to the South line of the Southwest Quarter of said Section 32;  
thence South 90 degrees 00 minutes 00 seconds East along said South line 108.28 feet to the Southwest corner of a tract of land conveyed to Gene Brown as described in Inst No. 88-10136 and recorded in the Office of the Marion County Recorder;  
thence North 00 degrees 58 minutes 11 seconds East along the West line of said Brown tract 885.00 feet to the northwest corner thereof;  
thence South 89 degrees 00 minutes 00 seconds East along the north line of said Brown tract and also along the north line of a tract conveyed to the Greater Northwest Baptist Church as described in Inst. No. 84-62675 and Inst. No. 84-98140 as recorded in the Office of the Marion County Recorder a distance of 800.00 feet to the Northeast corner of said Church tract;  
thence South 00 degrees 58 minutes 11 seconds West along the East line of said Church tract 665.00 feet to the South line of the Southwest Quarter of said Section 32;  
thence South 90 degrees 00 minutes 00 seconds East along said South line 1312.20 feet to the point of beginning and containing 282.441 acres more or less.

Subject to the rights of way for 62nd Street on the South, Rodebaugh Road on the West and 71st Street on the North.

Subject to an easement for an electric transmission line to Indianapolis Power and Light Co.

Subject to an easement for Chin Creek and the August Branch and to all other