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MARY L. BLANK
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(2)

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
EMERALD VILLAGE AT PEBBLE BROOK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 30th day of MARCH, 2000, by Pebblebrook Partners, LLC, an Indiana limited liability company (the "Developer").

Recitals

1. Developer is the owner of the real estate which is described in Exhibit 'A' attached hereto and made a part hereof (the "Real Estate" or the "Initial Real Estate").
2. Developer intends to subdivide the Real Estate into residential lots.
3. Before so subdividing the Real Estate, Developer desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the Plat Covenants and Restrictions for Real Estate as hereafter recorded in the office of the Recorder of Hamilton County, Indiana and of collecting and disbursing the assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tract adjacent to the Initial Real Estate to the provisions of this Declaration. Such additional real estate shall hereafter be referred to as the "Supplemental Real Estate". The Initial Real Estate, together with any such Supplemental Real Estate, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate".

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be acquired, hold, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following provisions, appements, covenants, conditions, restrictions, easements, assessments, charges and liens, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

**ARTICLE I
DEFINITIONS**

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

1.1 "Association" means *Ernesad Village At Pebble Brook Homeowners Association, Inc.*, an Indiana not-for-profit corporation, which developer has caused or will cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Article VI, paragraph 6.1 of this Declaration.

1.3 "Boulevard Declaration" means the Declaration of Covenants, Conditions and Restrictions in *Pebblebrook Boulevard Association* recorded with the Recorder of Hamilton County, Indiana, on December 12, 1997, as Instrument Number 970975376Z.

1.4 "Boulevard Association" means the "Boulevard Association" as defined in and established by the Boulevard Declaration.

1.5 "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any Plat of a part of the Real Estate which are not located on Lots and which are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common areas may be located within a public right-of-way or in an easement area as shown on the plat.

1.6 "Common Expenses" means (i) expenses of and in connection with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping not located on a Lot except for lawn maintenance as described herein, (unless located on an Easement located on a Lot to the extent the Association deems it necessary to maintain such easement) (ii) expenses of and in connection with the maintenance, repair or continuation of the drainage facilities located within and upon the Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance with respect to the Common Areas and (v) all expenses incurred in the administration of the Association and (vi) expenses associated with trash pick-up within the Real Estate, (vii) expenses of and in connection with the maintenance, repair and replacement of the Private Street, and (viii) the amount due from the Association, as a member of the Boulevard Association, under Article V of the Boulevard Declaration.

1.7 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Residence Unit or Lot within or upon the Real Estate, but in no event shall the Development Period extend beyond the date ten (10) years after the date this Declaration is recorded.

1.8 "Drainage and Utility Easement", "Drainage Easement", "Utility Easement", "Ingress Egress Easement", and "Non-Access Easement" shall mean those areas designated on a Plat as "D. & U. Esmt", "D. Esmt", "U. Esmt", "I.E.E.", and "N.A. E.", respectively, or any combination thereof. The "Landscape Easement" shall mean the "Landscape Easement" identified on the Plat as Instrument Number 970975377S. All the easements described in the immediately preceding sentence are hereinafter referred to as Easement(s). Easements are hereby created and reserved (a) for the use of

Developer, all public and private utility companies (not including transportation companies), governmental agencies (including, but not limited to, fire safety and prevention, law enforcement and emergency services) and the Association for access to the Real Estate 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 but not limited to sanitary sewers, storm sewers and cable television services; and (f) for (i) the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property, (ii) the use of the Association and the City of Noblesville for access to and maintenance, repair and replacement of such drainage system and for access to and maintenance, repair and replacement of the sanitary sewer system. The Owner of any Lot subject to an Easement, including any builder, shall be required to keep the portion of an Easement on the Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from Hamilton County Drainage Board and prior written approval of the Developer. The delineation of the Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such Easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it hereunder. Only decks, patios without roofs, walkways, fences and landscaping which do not impair or impede the flow of drainage water are permitted within the Easements, and all other improvements, at Developer's written request, shall be removed by the Owner at the Owner's sole cost and expense. The Owners of Lots in the Subdivision subject to an Easement shall take and hold title to the Lots subject to the Easements hereth created and reserved.

1.9 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Real Estate.

1.10 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot or Residence Unit.

1.11 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot or Residence Unit designed for occupancy by one family, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot, Residence Unit or any real estate in the Real Estate.

1.12 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the Office of the Recorder of Hamilton County, Indiana.

1.13 "Private Streets" shall mean and refer to as internal streets to be constructed upon the Real Estate, which Private Streets shall not be dedicated to the public.

1.14 "Residence Unit" means one-half (1/2) of a building designed for residential occupancy including one-half (1/2) of the thickness of any party wall separating the Residence Unit from another Residence Unit comprising the building. A Lot may contain one (1) or two (2) Residence Units.

ARTICLE II**APPLICABILITY**

All Owners, their tenants, guests, invitees, and mortgagees, and any other person using or occupying a Lot or Residence Unit or any other part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot or Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any builder or any subsequent Owner of the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants for the Owner, the Owner's heirs, personal representatives, successors and assigns, with Developer and the Owners from time to time, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE III**PROPERTY RIGHTS**

3.1 **Owners' Easement of Enjoyment of Common Areas.** Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Lot and Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated upon the Common Areas;

(ii) the right of the Association to fine any Owner or make a special assessment against any Residence Unit or Lot in the event a person permitted to use the Common Areas by the Owner of the Residence Unit violates any rules or regulations of the Association as long as such fines and regulations are applied on a reasonable and nondiscriminatory basis;

(iii) the right of the Association to make reasonable regular assessments for use and maintenance of the Common Areas and any services provided by the Association such as trash collection, snow removal, grass mowing or like services;

(iv) the right of the Association to dedicate or transfer all or any part of the Common Areas or to grant easements to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;

(v) the right of the Association to enforce collection of any fines or regular or special assessments through the imposition of a lien pursuant to Paragraph 7.8;

(vi) the rights of Developer as provided in this Declaration and in any Plat of any part of the Real Estate;

(vii) the terms and provisions of this Declaration;

(viii) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate;

(ix) the right of the Association to limit the use of Common Areas in a reasonable nondiscriminatory manner for the common good; and

(x) any lakes or ponds on Common Areas are for drainage purposes only and not for recreation. No one shall be permitted to enter upon an Owner's Lot in order to access a lake or pond without that Owner's express consent.

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of enjoyment of the Common Areas. Such permissive use shall be subject to the By-Laws of the Association and any reasonable nondiscriminatory rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of the Common Areas. Developer may convey all of its right, title, interest in and to any of the Common Areas to the Association by quitclaim deed, and such Common Areas so conveyed shall then be the property of the Association. Common Areas cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Owners, excluding the Developer.

ARTICLE IV

RESTRICTIONS

4.1 Lease of Residence Units. If any Owner desires to lease a unit, such rental shall be pursuant to a written lease with a minimum term of one year and such lease shall provide that the lessee shall be subject to all rules and regulations of the Association and the terms and conditions of these Declarations.

4.2 Use of Common Areas. The Common Areas shall not be used for commercial purposes.

4.3 Lot Access. All Lots shall be accessed from the interior streets of the Real Estate.

4.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or surrounding Common Area, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

4.5 Prohibited Activities. No noxious or offensive activity shall be carried on upon any Lot or Common Areas, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Each Lot and all Common Areas shall be kept and maintained in a slightly and orderly manner and no trash or other rubbish shall be permitted to accumulate thereon. The Board of Directors shall promulgate and enforce such rules and regulations as it deems necessary for the common good in this regard.

4.6 Signs. No signs of any nature, kind or description shall be erected, placed or maintained on or in front of any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation; provided, however, that Developer and its designee, shall be permitted to erect and install any signs which Developer, in Developer's sole discretion, is desirous of erecting or installing.

4.7 Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. All such home occupations must also be in compliance with the provisions of the applicable zoning ordinance. Nothing contained herein shall be construed or interpreted to affect the activities of Developer, or Developer's designee, in the sale of Lots as a part of the development of the Real Estate, including, specifically, the right of Developer or Developer's designee to post such signs and maintain such model residences as it deems necessary until such time as Developer's last Lot is sold.

4.8 Parking. No parking shall be allowed on the streets except for emergencies. Any vehicle parked on the street shall be subject to towing at the Owner's expense.

4.9 Private Streets. The streets within the Subdivision shall be privately owned by the Association and shall not be dedicated to the public and shall be located as shown on the Plat.

4.10 Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas, subject to the conditions and restrictions contained in the Declaration.

4.11 Building Location. Building setback lines are established on the Plat. No fringing shall be erected or maintained within the setback lines of a Lot.

4.12 Lot Use. All Lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on any Lot. No structure shall be erected, placed or permitted to remain on any Lot other than single-family or two family dwellings not to exceed two stories in height. If such dwellings are attached to other dwelling units, then such dwellings shall include one-half (1/2) of the thickness of any party walls separating the unit from another unit.

4.13 Accessory and Temporary Buildings. No trailers, sheds, outhouses or storage sheds or tool sheds of any kind shall be erected or situated on any Lot in the Subdivision, except that used by the Developer during development of the Subdivision or the construction of a residential building on the property, which temporary construction structures shall be promptly removed upon completion of construction of the Subdivision or building, as the case may be. No attached storage sheds shall be

added to any residential unit.

4.14 Temporary Structures. No trailer, camper, motor home, truck, shack, tent, boat, recreational vehicle, garage or outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

4.15 Nuisances. No domestic animals raised for commercial purposes and no farm animals or fowl shall be kept or permitted on any Lot. No noxious, unlawful or otherwise offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be or may become a serious annoyance or nuisance to the neighborhood.

4.16 Vehicle Parking. No camper, motor home, truck, trailer, boat or recreational vehicle of any kind may be stored on any street or on any Lot in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair on a Lot unless such repairs are done in the garage. Disabled vehicles shall not be allowed to remain in open public view. No commercial vehicles over three-quarter (¾) ton or trucks with business signs or logos shall be parked in the Subdivision except inside a garage.

4.17 Signs. No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising a property for sale, and except that Developer and its affiliates and designees, including the builders, may use larger signs during the sale and development of the Subdivision.

4.18 Mailboxes. All mailboxes and replacement mailboxes shall be uniform and shall conform to the standards set forth by the Architectural Review Committee.

4.19 Garbage and Refuse Disposal. Trash and refuse disposal will be on an individual basis, lot by lot. The community shall not contain dumpsters or other forms of general or common trash accumulation except to facilitate development and house construction. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.

4.20 Storage Tanks. No gas, oil or other storage tanks shall be installed on any Lot.

4.21 Water Supply and Sewage Systems. No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field or other method of sewage disposal shall be located or constructed on any Lot.

4.22 Ditches and Swales. All owners, including builders, shall keep unobstructed and in good maintenance and repair all open storm water drainage ditches and swales which may be located on their respective Lots.

4.23 Garages, Driveway and Parking Space. Each residential dwelling unit shall include at

least a two (2) car attached garage and said garage shall have a hard surface driveway large enough to provide for one (1) off-street parking space for said residential dwelling unit.

4.24 Antennae and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any Lot without the written approval of the Architectural Review Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area, or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws, or (d) it is a satellite dish thirty-nine (39) inches or less in diameter and not affixed to the roof of a residence.

4.25 Awnings. No metal, fiberglass, canvas or similar type material awnings or patio covers shall be permitted in the Subdivision, except that a builder may utilize a canvas or similar type material awning on its model home sales center in the Subdivision.

4.26 Fencing. No fence shall be erected on or along any Lot line, nor on any Lot without written approval of the Architectural Review Committee.

4.27 Swimming Pools. No swimming pools either above ground or below ground shall be permitted in the Subdivision. No hard surfaced sports courts of any kind shall be permitted on any Lot except as approved by Architectural Review Committee.

4.28 Solar Panels. No solar heat panels shall be permitted on roofs of any structures in the Subdivision. All such panels shall be enclosed within fenced areas and shall be concealed from the view of neighboring Lots, common areas and the streets.

4.29 Outside Lighting. Except as otherwise approved by the Developer in connection with a builder's model home sales center, all outside lighting contained in or with respect to the Subdivision shall be of an ornamental nature compatible with the architecture of the project and shall provide for projection of light so as not to create a glare, distraction or nuisance to the other property owners in the vicinity of or adjacent to the Subdivision.

4.30 Site Obstruction. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of the street lines extended or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway

pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

4.31 Lakes or Ponds. With respect to any lake or pond located within the Real Estate which shall be owned by various lot owners or the Association, there shall be: no fishing, swimming, boating, ice skating or other recreational activities permitted thereon and no lot owner shall construct or locate any dock, deck, pier or float adjacent to or upon any lake or pond within the Real Estate.

ARTICLE V

ASSOCIATION

5.1 Membership. Each Owner of a Residence Unit automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member of the Association so long as he or she owns the Residence Unit.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) **Class A Members.** Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the following subparagraph (ii)), in which event Developer shall then have a Class A membership). Each Class A member shall be entitled to one (1) vote for each Residence Unit owned by Owner.

(ii) **Class B Member.** The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each unsold lot within the Real Estate. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership, or December 31, 2010, or such date as determined by Developer, whichever comes first.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Residence Unit, all such persons or entities shall be members of the Association, but the single vote in respect of such Residence Unit shall be exercised as the persons or entities holding an interest in such Residence Unit determine among themselves. In no event shall more than one person exercise a Residence Unit's vote under Paragraph 5.2 (in the case of Class A membership). No Residence Unit's vote shall be split.

5.5 Boulevard Association. The Association shall also be a member of the Boulevard Association and shall cause to be assessed and collected from each Owner an equal, uniform assessment, the sum of which, for all Owners, shall equal the Association's pro-rata annual and special assessment

due and owing per the terms of Article V of the Boukward Declaration.

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

5.7 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination penalty, on written notice of ninety (90) days or less.

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

(i) Maintenance of the Common Areas including any and all improvements thereon in good repair as the Association deems necessary or appropriate including streets, signs, sidewalks, ponds, lakes and recreation areas.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Area as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of all private street or entrance signs.

(iv) Mowing of lawns located on any lot as well as in any street right of way which lawns shall be considered part of the Common Areas for purposes of maintenance only. Owners shall be responsible for edging around fences, shrubs and bushes. Maintenance of lawns shall mean solely the mowing of grass and the care, fertilizing, trimming, removal and replacement of trees planted by the Developer. It shall not include the fertilizing or watering of lawns on Lots which shall be the responsibility of the Owner nor the care and maintenance of (i) shrubs, (ii) trees which were not planted by Developer, (iii) flowers, or (iv) other plants on any Lot, nor shall maintenance of lawns mean the mowing of grass within any fenced portion of any Lot for which permission to fence has been granted as herein provided.

(v) Replacement of the drainage system in and upon the Common Areas or any easement as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of the Owner, including any builder, of a Lot subject to an Easement to keep the position of the drainage system and Easement on the Lot free from obstructions so that the storm water drainage will be unimpeded.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration and such other insurance as the Board of Directors deems necessary or advisable.

(vii) Payment of taxes, if any, assessed against and payable with respect to the Common

Areas.

- (viii) Assessment and collection from the Owners of the Common Expenses.
- (ix) Contracting for such services as management, snow removal, Common Area maintenance, security control, trash removal or other services as the Association deems necessary or advisable. Snow removal by the Association shall only include snow removal of streets and driveways and shall not include snow removal of sidewalk, entranceways, patios or decks.
- (x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and the zoning covenants and commitments.
- (xi) Maintaining and repairing the Private Streets and the private sewer system.

5.9 Powers of the Association. The Association may adopt, amend, or rescind reasonable rules and regulations not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest rate charges on past due installments or any regular or special assessments or other charges against any Residence Unit or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.10 Compensation. No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.11 ~~Non-liability of Directors and Officers.~~ The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.12 ~~Indemnity of Directors and Officers.~~ The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the

adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Paragraph 5.12.

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

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established the Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee at any time upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of the Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, buildings, structures or any other improvements placed by any person, including any builder, on any Lot, and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate and to preserve the harmonious relationship among structures and the natural vegetation and topography.

(i) *In General.* No residence, building, structure, satellite dish, antenna, walkway, fence, deck, yard ornaments), wall, patio or other improvement of any type or kind shall be erected, constructed, placed or altered on any lot and no change shall be made in the exterior color of any Residence Unit or accessory building located on any lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or replacement. Such plans shall include plot plans showing the location of the improvement proposed to be constructed or placed upon the Lot, each property and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise specified by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. It is contemplated that the Architectural Review Committee will review and grant general approval of the floor plans and exterior styles of the homes expected to be offered and sold by the builders and that such review and approval will occur prior to the builders selling any homes in the community. Unless otherwise directed in writing by the Architectural Review Committee, once a builder has received written approval of a particular floor plan and exterior style, it shall not be necessary to resubmit to the Architectural Review Committee in order for such builder to build the same floor plan and exterior style on other Lots.

(ii) *Power of Disapproval.* The Architectural Review Committee may refuse to approve any application made as required under Paragraph 6.2(i) above (a "Requested Change") when:

- (a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the Requested Change to be in violation of any restrictions in this Declaration or in a Plat of any part of the Real Estate;
- (b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent buildings or structures; or
- (c) The Requested Change, or any part thereof, in the opinion of the Architectural Review Committee, would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) *Rules and Regulations.* The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or a Plat of any part of the Real Estate, as long as the same are not inconsistent with this Declaration or such Plats).

6.3 Duties of the Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within thirty (30) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed disapproved. One Copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its representative may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with the approved Requested Change, or not approved, to be stopped and removed.

ARTICLE VII

ASSESSMENTS

7.1 Purpose of Assessments. The purpose of Regular Assessments, Special Assessments, and Boulevard Assessments is to provide funds for the Boulevard Association and to maintain and improve the Common Areas and related facilities and Private Streets for the benefit of the Owners, and the same shall be levied for the following purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, any Easement (which is the responsibility of the Association) and drainage system, and (iii) for the performance of the responsibilities specifically provided for herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the Maximum Regular Assessment as follows:

(i) Until December 31, 2000, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed \$300.00 per year or \$25.00 per month.

(ii) From and after January 1, 2001, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than fifteen percent (15%) above the Regular Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (iii).

(iii) From and after January 1, 2003, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time to time incur, but only with the assent of two-thirds (2/3) of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called for such purpose.

7.4 Boulevard Assessment. In addition to the Regular Assessments and Special Assessments, the Board of Directors shall make an assessment against each Residence Unit to satisfy the Association's obligations, as a member of the Boulevard Association, for assessments due under Article V of the Boulevard Declaration.

7.5 No Assessment Against Developer or Builders. Developer and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Residence Unit thereon shall not pay any Regular Assessment, Special Assessment, or Boulevard Assessment (except as otherwise required by the Boulevard Declaration) so long as any Residence Unit constructed thereon by Developer or such Builder has not been sold to an Owner intending to occupy such Residence Unit as a single family residence.

7.6 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment, Special Assessment (if any), and Boulevard Assessment shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of such Residence Unit to an Owner who is not one of the persons or entities named in Paragraph 7.5 above.

At closing the Owner shall pay an amount equal to one (1) year's Regular Assessment which shall be prorated for the calendar year in which such closing occurs and which shall be applied against the obligations set forth in Article VII, and the amount of the Boulevard Assessment required by the Boulevard Declaration.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and

late charges on past due installments of assessments.

7.7 Failure of Owner to Pay Assessments

(f) No Owner shall be exempt from paying Regular Assessments, Special Assessments or Boulevard Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment (as described in Paragraph 7.8 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Any past due assessments shall be subject to an interest charge at the rate of interest paid on judgments but not less than twelve percent (12%) per year. Upon the failure of an Owner to make timely payments of any assessment when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any unpaid assessment and declare the same immediately due and payable, notwithstanding any other provisions hereto to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Residence Unit or Lot, costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due until paid.

(g) Notwithstanding anything contained in this Paragraph 7.7 or elsewhere in this Declaration, any sale or transfer of a residence Unit or Lot to a Mortgagee pursuant to a foreclosure of 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 assessments (or periodic installments, if applicable) 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 Residence Unit thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor.

7.8 Creation of Lien and Personal Obligation. Each Owner (other than the Developer or a builder during the Development Period) of a Residence Unit or Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) regular assessments for Common Expenses (Regular Assessments), (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"), (iii) and Boulevard Assessments. Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. All such assessments, together with interest,

costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Residence Unit or Lot against such assessment is made prior to all other liens except only (i) tax liens on any Residence Unit or Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Residence Unit or Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Residence Unit) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Residence Unit, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Residence Unit or Lot. Such statement shall be binding upon the Association as of the date of such statement.

ARTICLE VIII INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if possible, contain provision that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

The Association shall not maintain casualty insurance insuring any Lot or Residence Unit. It shall be the sole and exclusive obligation of each Owner to procure and maintain sufficient casualty insurance insuring his or her Lot or Residence Unit.

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and Private Streets and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committees of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

That Association shall not maintain liability insurance with respect to any Lot or Residence Unit

and it shall be the sole and exclusive obligation of each Owner to procure and maintain sufficient liability insurance with respect to his or her Lot or Residence Unit.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate including but not limited to officers' and directors liability insurance.

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

ARTICLE IX MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, (i) to keep the grass on the Lot properly cut and keep the Lot, including that located within any Drainage Utility and Sewer Easements located on the Lot, (ii) to keep the Lot free of weeds, trash or construction debris and otherwise neat and attractive in appearance; and (iii) to perform all exterior maintenance on his or her Resident Unit so that the same is maintained in a safe, neat and attractive manner. If the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by a majority vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon to a condition acceptable to the Association. The cost of any such work shall be and constitute a Special Assessment against such Lot and the Owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association is required to maintain hereunder, the Association shall repair or replace the same to the extent of the availability of insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds or against such Owners who, in the sole discretion of the Board of Directors, benefit by the Special Assessments if less than all benefit. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas, if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of the Owner's family or of a guest, tenant, invitee or other occupant of visitor of such Owner, damage shall be caused to the Common Areas, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such

maintenance, repairs and replacements, unless such ~~loss~~ is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a Special Assessment against such Owner, whether or not a builder, and its Residence Unit and Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

9.3 Common Driveways. When two (2) Residence Units share a driveway, but are located on separate Lots, then the Owner of each Residence Unit shall be equally responsible for the maintenance of the driveway. No Owner shall block access to the one-half (1/2) of the driveway or garage used for the other Residence Unit. Either Owner of a Residence Unit may institute repair or maintenance of the driveway and the other Residence Unit Owner shall be equally responsible for the cost of the repair or maintenance. If any Owner fails to contribute for the Owner's share of the cost of repair or maintenance, the other Owner may bring an action to recover the costs and shall be entitled to receive costs, expenses and reasonable attorneys' fees in pursuing collection of the costs.

ARTICLE X

MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessment and other defaults, if any, of the Owner of a Residence Unit or Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot or Residence Unit may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgage and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise 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, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become charges against the Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee on any Lot or Residence Unit may make the payment on behalf of the Association.

ARTICLE XI
AMENDMENTS

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

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by Paragraph 11.1(iiv) at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.
- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-seven percent (67%) in the aggregate of all Owners; ~~provided, that any such amendment shall require the prior written approval of a Developer so long as Developer or any entity related to the Developer owns any Lot or Residence Unit within and upon the Real Estate.~~
- (v) Mortgagees' Vote On Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers and Servicers Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing Paragraph 10.2.

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

11.2 By the Developer, Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Real Estate, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation, to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the 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, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

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

ARTICLE XII

PARTY WALLS

12.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residence Units upon the Real Estate and placed on the dividing lines between the Residence Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

12.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. For purposes of this Article XII, the term "party wall" shall include the roof connecting the two (2) Residence Units.

12.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the other Owner shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

12.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who

by his negligent, malicious or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

12.6 Boundaries. "Plans", as that term is used herein, shall mean and refer to the floor and building plans of any Residence Unit, together with any surveys and final elevation Plans. In the event that any horizontal or vertical boundary line as shown on the plans do not coincide with the actual location of the respective walls, floor, ceiling, driveway, or roof of any Residence Unit because of inexactness of construction, settling after construction, or for any other reason, then the boundary line of such Residence Unit and its respective walls, floor, ceiling, driveway, or roof shall be deemed to be, and treated for purposes of occupancy, possession, maintenance, decoration, and use and enjoyment, as in accordance with the actual and existing construction. In such cases, permanent easements for exclusive use shall exist in favor of the owner of each Residence Unit in and to the space outside of the boundary lines of the Residence Unit and its respective walls, floor, ceiling, driveway, or roof as indicated on the plans, but within the walls, floors, ceilings, driveway or roof of the Residence Unit as they may actually exist.

ARTICLE XIII

MISCELLANEOUS

13.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Hamilton County, Indiana, or zoning commitment shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions, restrictions or commitments. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions, restrictions or commitments; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing to enforce any such covenants, conditions, restrictions or commitments.

13.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions, restrictions or commitments enumerated in this Declaration or in a Plat of any part of the Real Estate or otherwise shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to it upon the occurrence, recurrence or continuance of such violation or violations.

13.3 Duration. These covenants, conditions and restrictions and all other provisions of this

Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2020, and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time

thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

13.4 Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

13.5 Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. *Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.*

13.6 Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

13.7 Annexation. All or part of the Supplemental Real Estate may be annexed by Developer to the Initial Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Hamilton County, Indiana, of a supplemental declaration by Developer, which supplemental declaration may be in the form of or part of a Plat. Such action shall require no approvals or annexation of the Owners.

13.8 HUD/Amendment Approval. All other provisions of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development

- (a) Annexation of additional properties other than the Additional Real Estate;
- (b) Dedication or Mortgaging of Common Area; and
- (c) Amendment of the Declaration of Covenants, Conditions and Restrictions.

ARTICLE XIV

DEVELOPER'S RIGHTS

14.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all the Real Estate (subject to the limitations hereinafter provided in this Paragraph 14.1) for

the use of Developer and its representatives, agents, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this Paragraph 14.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement property located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

14.2 Signs. Developer shall have the right to use signs of an size during the Development Period and shall not be subject to the Plat Covenants and this Declaration with respect to signs during the Development Period. The Developer shall also have the right to construct or change any building improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

14.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Hamilton County, Indiana, Developer, any entity retained to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices or trailers.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

PEBBLEBROOK PARTNERS, LLC, an Indiana limited liability company

BY: PLATINUM PROPERTIES, LLC, an Indiana limited liability company, member

By: Paul Rioux
Paul Rioux, President

STATE OF INDIANA)
) SS:
COUNTY OF Madison)

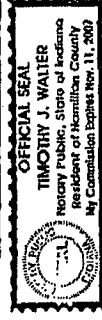
Before me, a Notary Public, in and for the State of Indiana, personally appeared Paul Roubin, President of Platinum Properties, LLC, an Indiana limited liability company, member of Pebblebrook Partners, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Emerald Village at Pebble Brook, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30th day of MARCH, 2000.

Notary Public
Printed: Timothy J. Walter

My Commission Expires: _____

My County of Residence is: _____



Prepared by: Charles Frankenburg
Wilson + Frankenburg Attorney at Law

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File No.: 99337B

EXHIBIT A

A part of the Southeast $\frac{1}{4}$ of Section 33, Township 19 North, Range 4 East of the Second Principal Meridian, City of Noblesville, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Southeast $\frac{1}{4}$, said point as referred to in a certain Land Title Survey of the parent tract, dated August 3, 1992 (last revised), prepared by MISE Corporation and certified by Jeffrey A. McFarouse, Indiana Registered Land Surveyor, #890003, said point being an "X" cut in the concrete pavement, said point being in the center of Indiana State Road #32 as established per said survey; thence North 00 degrees, 22 minutes, 42 seconds East, (bearing established from State Plane Coordinates on established section corners), along the West line of said Southeast $\frac{1}{4}$, 399.30 feet to the Point of Beginning; thence continuing North 00 degrees, 22 minutes, 42 seconds East, along said West line, 630.70 feet to a point on the southerly line of The Villages at Pebble Brook, Section II, per plat thereof recorded as Instrument 92-25792, in the office of the Recorder in said county and state; (the next two courses being on southerly and easterly lines of said plat); 1) thence North 89 degrees, 29 minutes, 06 seconds East, 73.39 feet to the southeast corner of Lot #212 in said plat; 2) thence North 02 degrees, 33 minutes, 03 seconds West, 158.74 feet, to the northeast corner of said Lot #212, said point also being on the southerly line of The Villages of Pebble Brook, Section I, per plat thereof recorded as Instrument #92-25791, (Office of the Recorder), (the next following courses being on the boundary of said plat), 1) said point being on a non-tangent curve to the left, thence along said curve through a central angle of 02 degrees, 13 minutes, 12 seconds, an arc distance of 20.34 feet, a chord bearing of North 80 degrees, 21 minutes, 02 seconds East, and a chord distance of 20.34 feet; 2) thence North 79 degrees, 14 minutes, 26 seconds East, 73.69 feet to a point on a tangent curve to the right; 3) thence along said curve through a central angle of 24 degrees, 00 minutes, 16 seconds, an arc distance of 92.17 feet, a chord bearing of South 88 degrees, 45 minutes, 26 seconds East, and a chord distance of 91.50 feet; 4) thence South 76 degrees 45 minutes, 18 seconds East, 62.19 feet to a point on a tangent curve to the right; 5) thence along said curve through a central angle of 64 degrees, 57 minutes, 10 seconds, an arc distance of 22.67 feet, a chord bearing of South 44 degrees, 16 minutes, 43 seconds East, and a

chord distance of 21.48 feet; 6) thence South 11 degrees, 48 minutes, 08 seconds East, 35.48 feet to a point on a tangent curve to the right; 7) thence along said curve through a central angle of 32 degrees, 34 minutes, 55 seconds, an arc distance of 136.48 feet, a chord bearing of South 04 degrees, 29 minutes, 19 seconds West, and a chord distance of 134.65 feet; 8) thence South 20 degrees, 46 minutes, 47 seconds West, 172.95 feet to a point on a tangent curve to the right; 9) thence along said curve through a central angle of 05 degrees, 19 minutes, 20 seconds, an arc distance of 26.94 feet, a chord bearing of South 23 degrees, 26 minutes, 27 seconds West, and a chord distance of 26.93 feet; 10) thence South 26 degrees, 06 minutes, 07 seconds West, 150.00 feet to a point on a tangent curve to the left; 11) thence along said curve through a central angle of 52 degrees, 12 minutes, 28 seconds, an arc distance of 282.47 feet, a chord bearing of South 00 degrees, 00 minutes, 07 seconds East, and chord distance of 272.80 feet; 12) thence South 26 degrees, 06 minutes, 21 seconds East, 79.73 feet to a point on a tangent curve to the right; 13) thence along said curve through a central angle of 06 degrees, 51 minutes, 54 seconds, an arc distance of 25.76 feet, a chord bearing of South 22 degrees, 40 minutes, 24 seconds East, and a chord distance of 25.75 feet; thence North 59 degrees, 28 minutes, 16 seconds West, 23.57 feet, to a point on a non-tangent curve to the right; thence along said curve through a central angle of 39 degrees, 19 minutes, 08 seconds, an arc distance of 85.78 feet, a chord bearing of North 74 degrees, 36 minutes, 10 seconds West, and a chord distance of 84.11 feet; thence North 54 degrees, 56 minutes, 36 seconds West, 79.48 feet to a point on a tangent curve to the right; thence along said curve through a central angle of 31 degrees, 01 minutes, 20 seconds, an arc distance of 94.75 feet, a chord bearing of North 39 degrees, 25 minutes 56 seconds West, and a chord distance of 93.60 feet; thence South 66 degrees, 04 minutes 43 seconds West, 114.90 feet, to the Point of Beginning, containing 6.1907 acres, (269,667.25 square feet), more or less.

NOTE: The acreage shown above is included for descriptive purposes only.