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MARTHA A. WOMACKS  
MARION COUNTY AUDITOR

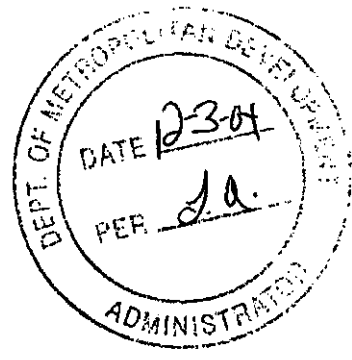
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SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
NORTHPOINT VILLAGE TOWNHOMES**

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PIKE TOWNSHIP ASSESSOR  
DRAFTSMAN J. G. McBrady

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR NORTHPOINT VILLAGE TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Northpoint Village Townhomes (the "Declaration") is made as of Nov. 29, 2004 by Northpoint Village LLC, an Indiana limited liability company (the "Declarant").

**RECITALS:**

WHEREAS, the Declarant is, or at the time of recordation of this Declaration will be, the owner of certain real property located in Marion County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property").

WHEREAS, the Declarant desires to create on the Property a residential community (the "Community") which shall have permanent open spaces and other common facilities for the benefit of the residents of the Community.

WHEREAS, the Declarant desires to provide for the preservation of the values of the Community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values of the Community to create an association to be known as Northpoint Village Townhomes Homeowners Association, Inc., an Indiana not-for-profit corporation (the "Association") to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration and collecting and disbursing the assessments and charges hereafter created.

NOW, THEREFORE, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1.1. "**Association**" shall mean and refer to the Northpoint Village Townhomes Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 1.2. "**Common Area**" or "**Common Areas**" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shall include all of the Property which is shown on such Plat and/or as described herein, and which is not part of a Lot. No part of the Common Area shall be dedicated to the public. The Common Area within the Property shall be what is identified on the Plat as Common Area "A" and shall comprise four components; namely:

- (a) private street comprising the street identified on the Plat as Decker Ridge Drive (the "Private Street");
- (b) concrete sidewalks located adjacent to the Private Street and in areas between buildings and adjacent to buildings (the "Sidewalks");
- (c) areas specifically identified as parking areas, located adjacent to Private Street and between buildings (the "Parking Areas"). Parking Areas are further described and defined in Article IX below; and
- (d) open space, which shall include all parts of the Common Area not occupied by the Private Street, Sidewalks, and the Parking Areas (the "Open Space").

Section 1.3. "**Declarant**" shall mean and refer to Northpoint Village LLC, an Indiana limited liability company, and its successors or assigns to whom Northpoint Village LLC, an Indiana limited liability company, assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the Office of the Recorder of Marion County, Indiana.

Section 1.4. "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Northpoint Village Townhomes, which is to be recorded in the Office of the Recorder of Marion County, Indiana.

Section 1.5. "**Designated Builder**" shall mean and refer, during such period as such designation by the Declarant may continue, any person or entity engaged in the construction of more than one Dwelling Unit who is designated by Declarant as a Designated Builder. Declarant may make and revoke any such designation at any time and from time to time.

Section 1.6. "**Dwelling Unit**" shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) townhouses and detached homes.

Section 1.7. "**Federal Agencies**" shall mean (by way of illustration but not limitation) the Federal Housing Authority, 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.

Section 1.8. "Lot" shall mean and refer to any discrete plot of land created by and shown on a Plat upon which a Dwelling Unit is intended to be constructed in accordance with applicable zoning ordinances; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as shown on any Plat or any part thereof, provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supersede the boundary lines for Lots shown on any Plat or part thereof.

Section 1.9. "Member" shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.10. "Mortgagee" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing. An **"Eligible Mortgagee"** shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article XII.

Section 1.11. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.12. "Party Wall" shall mean and refer to each wall which is built as part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots. Party Walls are further described and defined in Article 10 below.

Section 1.13. "Plat" shall mean and refer to a final plat or an "as-built" subdivision plat, of all or part of the Property, recorded with the Recorder of Marion County, Indiana.

Section 1.14. "Property" shall mean and refer to that certain real property located in Marion County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference as the same may be duly subdivided and platted, and any additions

thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Declaration.

## **ARTICLE II**

### **MEMBERSHIP**

Every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one (1) membership in the Association for each Lot it owns.

## **ARTICLE III**

### **VOTING RIGHTS**

**Section 3.1. Classes.** The Association shall have two (2) classes of voting membership as follows:

**Class A:** Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership pursuant to Article II herein.

**Class B:** The Class B Member shall be the Declarant. A Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. The Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first:

- (a) within four (4) months after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) seven (7) years from the date of recordation of this Declaration; or
- (c) sixty (60) days after both (i) the Declarant abandons construction and (ii) any Designated Builder abandons construction. For purposes hereof, the "abandonment of construction" shall not be deemed to have occurred unless and until there is no evidence of continuing construction and no new dwelling construction has been initiated for a period of eighteen (18) months.

**Section 3.2. Multiple Ownership Interests.** If more than one (1) person or entity holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership interest shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.



**Section 3.3. Board of Directors.** The Board of Directors shall be appointed and/or elected as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association.

#### **ARTICLE IV**

#### **PROPERTY RIGHTS**

**Section 4.1. Member's Easements of Enjoyment.** Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

(a) the right of the Association to limit the number of guests of Members on the Common Area or to make any part of the Common Area available to occupants of adjacent real estate or members of the general public;

(b) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Area and the personal conduct of Owners, occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof;

(c) the right of the Association to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any nonessential services offered by the Association, to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded, for any period during which any assessment against such Member's Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) The right of the Association at any time, or upon dissolution of the Association, and consistent with the then-existing zoning and subdivision ordinances of the City of Indianapolis (the "City") and/or Marion County, Indiana (the "County") and consistent with its designation of the Common Area as "open space", to transfer all or any part of the Common Area to an organization conceived and organized to own and maintain common open space, or, if such organization will not accept such a transfer, then to the City and/or County (herein sometimes collectively referred to as the "Local Governing Authority") or other appropriate governmental agency, or, if such a transfer is declined, then to another entity in accordance with the laws governing the same, for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of each class of Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which having been sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents. The re-subdivision or adjustment of the boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

(e) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements through or over any portion of the

Common Area;

- (f) the right of the Association to lease the Common Area, provided however that such lease(s) must:
  - (i) be only to non-profit organizations;
  - (ii) prohibit assignment and subleasing;
  - (iii) require the prior, written approval of the Association of uses of the Common Area and facilities, which must be in accordance with this Declaration;
  - (iv) be consistent with the then-existing ordinances of the Local Governing Authority; and
  - (v) be consistent with the open space designation of the Common Area.
- (g) the right of the Declarant or the Association to re-subdivide and/or adjust the boundary lines of the Common Area consistent with applicable zoning and subdivision ordinances as either deems necessary for the orderly development of the subdivision;
- (h) all rights reserved by the Declarant in Article VIII hereof; and
- (i) the right of the Declarant to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes.

The Association, acting through its board of directors (the "**Board of Directors**"), may exercise these rights without the need for any approval from any Member, Mortgagee or any Federal Agency, unless provided otherwise in this Declaration.

**Section 4.2. Delegation of Use.** Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, the rental agreement shall contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

## ARTICLE V

### ASSESSMENTS

**Section 5.1. Creation of the Lien and Personal Obligation for Assessments.** The Declarant covenants, for each Lot owned, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments (as hereinafter defined), (ii) Special Assessments (as hereinafter defined), and any other amounts as may be provided for hereunder to be due from any Owner in connection with his, her or its ownership of a

Lot in the Community. Such assessments are to be established and collected as hereinafter provided. The Association's Annual Assessments and Special Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and shall not be the personal obligation of a successor in interest unless expressly assumed by such successor. The Annual Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on the Lot in the amount of the entire Annual Assessment or Special Assessment, but shall be payable in equal installments, collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

**Section 5.2. Purpose of Assessment.** The assessments levied by the Association shall be used for the following purposes:

- (a) the improvement, maintenance, and repair of all Common Areas including the Private Street, the Sidewalks, the Parking Areas, and the Open Space;
- (b) the maintenance, repair, irrigation, and fertilizing of all landscaping located within the Common Area including, without limitation, trees, lawns, shrubbery, and other plantings;
- (c) to fulfill the duties of the Association specified in Article XI below; and
- (d) to carry out such other purposes as the Board of Directors may, in its sole discretion, determine to be appropriate.

**Section 5.3. Establishment of Annual Assessment.**

(a) The Association must levy in each of its fiscal years an annual assessment (the "Annual Assessment"), against each Lot. The amount of such Annual Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.4, below, and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable as to all Lots (as shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot to an Owner who is not the Declarant or a Designated Builder. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The amount of the Annual Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots.

**Section 5.4. Basis and Maximum Annual Assessment.** Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the Declarant, the maximum Annual Assessment shall be One Thousand Two Hundred Dollars (\$1,200.00).

(a) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment

shall increase, effective January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal, plus (ii) an amount equal the amount of the prior years Annual Assessment times ten percent, (10%).

(b) The Board of Directors may determine not to increase the maximum Annual Assessment to the full extent of the automatic increase provided by subparagraph (a) of this Section, in which case the Board of Directors may determine to increase the Annual Assessment by any lesser amount.

(c) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment may be increased above that established by subparagraph (a) annually, provided that, to be effective, any such change shall have the assent of more than fifty percent (50%) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**Section 5.5. Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "Special Assessment"). Any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lots benefit, as reasonably determined by the Board of Directors, which determination shall be final. The amount of the Special Assessment shall be the same for each Lot . To be effective, any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which setting forth the purpose of the meeting having been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**Section 5.6. Quorum for any Action Authorized Under Sections 5.4 or 5.5.** At the first calling of a meeting under Section 5.4 or Section 5.5 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.4 and Section 5.5 and to applicable law, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5.7. One Time Assessment.** Upon the closing of the initial conveyance of a Lot to an Owner other than the Declarant or a Designated Builder, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution towards it working capital and startup fund, an amount of One Hundred Dollars (\$100.00), which payment shall be non-refundable and shall not be considered as an advance payment of any other assessment or other charge otherwise owed the Association with respect to such Lot. Such working capital and startup funds shall be held and used by the Association for payment of, or reimbursement to

Declarant for advances made to pay expenses of the Association for the early period of the operation of the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire addition equipment or services deemed necessary by the Board of Directors.

**Section 5.8. Rate of Assessment.** The Annual Assessment shall be fixed at a uniform rate and due and owing for all Lots, except for unoccupied Lots owned by the Declarant or a Designated Builder, and the Special Assessments shall be fixed at a uniform rate and due and owing for all Lots, except for unoccupied Lots owned by the Declarant or a Designated Builder.

**Section 5.9. Notice of Assessment and Certificate.** Written notice of the Annual Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Annual Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 5.10. Remedies of the Association in the Event of Default.** If any assessment pursuant to this Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the rate charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Association may:

- (a) impose a penalty or late charge as previously established by rule;
- (b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;
- (c) suspend a Member's voting rights, right to hold an office within the Association, and right to use nonessential services offered by the Association to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. An Owner, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his, her or its obligations to pay such assessments for the duration of such suspension or otherwise; and
- (d) accelerate the due date of the unpaid assessment so that the entire balance shall become immediately due, payable and collectible.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their duties.

**Section 5.11. Subordination of the Lien to Mortgages.** The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage or deed of trust encumbering a Lot. Notwithstanding anything contained in this Section 5.11 or elsewhere in

this Declaration, any sale or transfer of a 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 therefore. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

**Section 5.12. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area; however, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 5.13. Reserves for Replacements.** The Association shall establish and maintain a reserve fund for the maintenance, repair and replacement of the Common Area and improvements located thereon by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Annual Assessment. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time considered to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## ARTICLE VI

### RESTRICTIVE COVENANTS

**Section 6.1. Residential Use.** The Property shall be used exclusively for residential purposes except as provided in Section 6.19 hereof. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant of the Dwelling Unit.

**Section 6.2. Architectural Review Board Approval.** No Structure (as herein defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term "Structure" shall include, but not be limited to, any building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot-tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

**Section 6.3. Laundry.** No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

**Section 6.4. Sight Lines.** No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

**Section 6.5. Maintenance.** Other than as specifically and expressly set forth in Section 11.1 below, an Owner shall, at all times, maintain its Dwelling Unit and all appurtenances thereto in good repair and in a state of neat appearance from all exterior vantage points. Prior to landscaping any Lot (other than perennial flowers within approved flower beds), the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and approval or disapproval. The Owner shall not be permitted to remove any trees or shrubs on the Lot without the approval of the Architectural Review Board, except as may be ordered by Local Governing Authorities or by the Architectural Review Board to maintain proper sight lines. No approval for removal of any trees or shrubs will be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs.

**Section 6.6. Nuisance.** No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot.

**Section 6.7. Signs.** The only signs permitted on the Property shall be customary home and address signs and real estate sale or lease signs which have received the prior written approval of the Architectural Review Board ("Permitted Signs"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total

surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable.

**Section 6.8. Animals.** No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

**Section 6.9. Trash Storage.** Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

**Section 6.10. Antennae Systems.** To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. Satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

**Section 6.11. Painting.** No person shall paint the exterior of any building, or portion thereof, a color different than the original color of said building or portion thereof without the proposed color having been first approved in writing by the Architectural Review Board and the Association. All Dwelling Units in the Community will, at all times, be painted in a uniform color, without variation.

**Section 6.12. Finished Exteriors.** The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board in writing. Absent approval from the Architectural Review Board to the contrary, all maintained, repaired, or replaced roofs and other structure exterior shall be the same color and texture as the original roof and other structure exterior.

**Section 6.13. Fences.** Except for any fencing installed by the Developer on any Lot or in any Common Areas, no fence or similar enclosure shall be erected or built on any Lot.

**Section 6.14. Vehicles.** No inoperable, junk, unregistered or unlicensed vehicle shall be kept



on the Property. No portion of the Property shall be used for the repair of a vehicle.

**Section 6.15. Commercial Vehicles.** No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the Architectural Review Board.

**Section 6.16. Recreational Vehicles.** No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

**Section 6.17. Towing.** The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

**Section 6.18. Garage Usage.** Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owner's shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

**Section 6.19. Rental Agreements.** Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Declaration shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

**Section 6.20. Initial Construction and Marketing.** The Declarant or its assigns, or any Designated Builder, may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or Structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Community.

**Section 6.21. Holiday and Seasonal Decorations.** Any holiday or seasonal decorations or ornamentation that is placed on the exterior of a Dwelling Unit or Structure, or that is otherwise visible from the exterior of such Dwelling Unit or Structure, shall be first approved by the Architectural Review Board.

**Section 6.22. Window Boxes.** No window boxes containing flowers or any other vegetation shall be erected or attached to any Dwelling Unit.

**Section 6.23. Dusk to Dawn Coach Lights.** Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

**Section 6.24. Additional Rules and Regulations.** The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

## **ARTICLE VII**

### **ARCHITECTURAL REVIEW BOARD**

**Section 7.1. The Architectural Review Board.** As used herein, the term "**Architectural Review Board**" will mean and refer to a group of individuals who will administer the duties described in Section 7.4, below. During the Committee Period, as herein defined, the Architectural Review Board will consist of two (2) committees: (i) the "**New Construction Committee**" and the "**Modification and Change Committee.**" Upon expiration of the Committee Period, these committees will be dissolved and the Architectural Review Board will not be divided into committees. For purposes of this Declaration, the term "**Committee Period**" will mean and refer to the period of time during which the Declarant owns at least one (1) Lot in the Development.

Nothing contained in this Declaration or in the Articles of Incorporation or By-Laws of the Association will prohibit an individual from serving on both committees simultaneously, however, membership on any one committee will not entitle any individual to also be a member of the other committee. Likewise, nothing contained herein will require the appointment of an individual to either such committee simply because that individual is also a member of the other committee described herein.

The New Construction Committee shall consist of three (3) members who are appointed by the Declarant. The Modification and Change Committee shall consist of a number of members equivalent to the number of members of the Board of Directors of the Association and will consist of the individuals who are members of the Board of Directors of the Association. Upon expiration of the Committee Period and dissolution of the New Construction Committee and the Modification and Change Committee, the rights and responsibilities of each such committee hereunder will simply be administered by the Architectural Review Board. Upon expiration of the Committee Period, the individuals who are members of the Board of Directors of the Association will automatically become members of the Architectural Review Board, without the need for any previous member of either committee to submit any type of resignation or acknowledgement of the termination of such committee. The term of membership for any member of the Architectural Review Board will be coterminous with the term of that individual's membership on the Board of Directors.

**Section 7.2. Removal and Vacancies.** Members of the New Construction Committee may be removed by the Declarant at any time, with or without cause. The Declarant will fill any vacancies on the New Construction Committee in the same manner that it has the right to initially appoint members of the New Construction Committee, in its sole discretion. Individuals who are members of the Modification and Change Committee may only be removed from that committee to the extent that such individual is removed or otherwise ceases to be a member of the Board of Directors of the Association. After the Committee Period, individuals who are members of the Architectural Review Board may only be removed from that board to the extent that such individual is removed or otherwise ceases to be a member of the Board of Directors of the Association. Appointments to fill vacancies in unexpired terms (during the Committee Period) on the Modification and Change Committee or (after the Committee Period) on the Architectural Review Board, shall be made in the same manner as members are appointed or elected to the Board of Directors of the Association.

**Section 7.3. Officers.** At the first meeting of the Modification and Change Committee of the Architectural Review Board following each annual meeting of Members, the Modification and Change Committee shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

**Section 7.4. Duties.** The Committees of the Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among Structures and the natural vegetation and topography in the Community. During the Committee Period, the New Construction Committee shall regulate all initial construction, development or improvements on the Property and the Modification and Change Committee shall regulate all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board (acting through the designated committees during the Committee Period and of its own accord after the Committee Period) shall:

- (a) review and approve or disapprove written applications of Owners for proposed alterations or additions to Lots;
- (b) periodically inspect the Property for compliance with adopted, written architectural standards and approved plans for alteration;
- (c) adopt and publish architectural standards subject to the confirmation of the Board of Directors;
- (d) adopt procedures for the exercise of its duties; and
- (e) maintain complete and accurate records of all actions taken by the Architectural Review Board.

No request for approval by the Architectural Review Board or any committee thereof will be reviewed or otherwise considered unless submitted in writing by the Owner requesting such approval. Approval by the Architectural Review Board of a correctly filed application shall not be deemed to be an approval by Local Governing Authorities nor a waiver of the applicant's obligation to obtain any required approvals from any such Local Governing Authorities or to otherwise comply with applicable local ordinances. No approval of the Architectural Review Board or any committee thereof shall be effective unless in writing and signed by the members of the Architectural Review Board or applicable committee whose approval is required hereunder.

**Section 7.5. Failure to Act.** Failure of the Architectural Review Board, any committee thereof or the Board of Directors to respond to any request for approval, enforce the architectural standards contained in this Declaration or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of Directors of any provision of this Declaration requiring such approval hereunder or otherwise prevent the Architectural Review Board or the Board of Directors from enforcing this Declaration at any later date.

**Section 7.6. Enforcement.** Any exterior addition, change or alteration made without a written application to, and approval of, the Architectural Review Board shall be deemed to be in violation of this Declaration and may be required by the Board of Directors to be restored to its original condition at the offending Owner's sole cost and expense.

**Section 7.7. Appeal.** Any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors by giving written notice of such appeal to the Association or any director within twenty (20) days of the adverse ruling.

## **ARTICLE VIII**

### **EASEMENTS AND OTHER AREAS**

**Section 8.1. Emergency Easement Rights.** The Declarant hereby grants a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

**Section 8.2. General Easements.** The Declarant hereby reserves unto itself and its assigns, any governmental or municipal agency, and any public or private utility, a general easement upon all Lots for the installation, maintenance, repair, and use of any drainage, utility, and sewer lines or infrastructure so as to permit the installation, maintenance, repair, and use of all electrical, telephone, water, gas, sanitary and storm sewer and other utility services, including all necessary lines, pipes, wires, cables, ducts, antenna, and other facilities to serve any Dwelling Unit constructed on the Property. This general easement shall be on all areas of a Lot not occupied by a Dwelling Unit, with the exception of areas covered by chimneys or patios. This general easement shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably or adversely affects any Dwelling Unit or portion thereof located upon such Lot, or (ii) unreasonably restricts the right of ingress and egress to such Lot.

**Section 8.3. Limitation on General Easement Rights.** When not an emergency situation or a governmental function, the rights accompanying the easements provided for in **Section 8.1** of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

**Section 8.4. Encroachments.** If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of storm water from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

**Section 8.5. Ingress Egress Easement.** The Declarant and its agents and employees, and

any Designated Builder and its agents and employees, shall have a right of ingress and egress, as required for construction on and development of the Property and otherwise over (i) Common Areas and (ii) portions of any Lots not occupied by a Dwelling Unit; provided, however, that any person or entity exercising such easement rights upon a Lot shall promptly repair any resulting damage so that the Lot is restored to the condition in which it existed immediately prior to the exercise of such easement rights.

**Section 8.6. Drainage, Utility and Sewer Easements (DU & SE).** Any Drainage, Utility and Sewer Easement (DU & SE) shown on any Plat are created to provide (i) paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the Property and adjoining ground and/or other drainage infrastructure systems and (ii) for the use by public and private utilities and local governments and their agencies having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Property and adjoining lands, for the purpose of the installation and maintenance of sanitary and storm sewers and (iii) utility easements for the use of the Declarant, the Association, the Owners, and any municipal or private utility companies for the installation and maintenance of mains, ducts, poles, lines, wires and other utility facilities and infrastructure.

**Section 8.7. Water Line Easement.** The Water Line Easement (Water Line ESMT) shown on any Plat is a non-exclusive easement for the installation, maintenance, and repair of a water line and infrastructure, and for use as a water line. The Water Line Easement is reserved for the Indianapolis Water Company, its agents, and the Declarant and the Declarant's assigns, and is hereby dedicated to the Indianapolis Water Company.

**Section 8.8. Reservation of Right to Grant Future Easements.** There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

**Section 8.9. Bonds and/or Dedication Requirements.** There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

**Section 8.10. Easements for Corrective Work.** There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of (i) correcting, repairing or maintaining any drainage, drainage infrastructure, utility infrastructure, grading or regrading, maintenance, landscaping, (ii) mowing, (iii) erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and (iv) executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Declaration.

**Section 8.11. Open Space.** The Open Space portions of the Common Area are not dedicated to the public and are not for use by the general public; instead, the Open Space portions of the Common Area are to be used exclusively by Owners and their family members, guests, invitees, and lessees.

**Section 8.12. Parking Areas.** Parking Areas are not dedicated to the public and are not to be used by the general public; instead, Parking Areas are to be used exclusively by Owners and their family members, guests, invitees, and lessees for the parking of motor vehicles.

**Section 8.13. Sidewalks.** That portion of the Common Area occupied by Sidewalks is hereby reserved for use by not only the Owners and their family members, guests, invitees, and lessees, but the general public, as well, for pedestrian purposes in the manner in which sidewalks are typically used.

**Section 8.14. Private Street.** The surface of that portion of the Common Area occupied by Private Street is reserved not only for the use for Owners and their family members, guests and invitees, but also for the use by the general public, for vehicular ingress and egress in the manner in which streets are customarily used.

## **ARTICLE IX**

### **PARKING**

Parking of any type of vehicle in any Common Area is prohibited in areas other than areas specifically identified as parking areas, adjacent to Private Street within Common Areas. Parallel parking within internal private streets within Common Areas is prohibited. The Board of Directors may promulgate such rules and regulations as it deems appropriate to regulate the use of any Common Areas to permit temporary parking for purposes of loading and unloading passengers and materials. Those rules and regulations may include the towing of any vehicles parked in violation of this Declaration, with no notice of towing required and at the vehicle owner's sole expense. Temporary parking of vehicles on adjacent public rights-of-way will be subject to applicable limitations and fees imposed by the Local Governing Authorities.

## **ARTICLE X**

### **PARTY WALLS**

**Section 10.1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots 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.

**Section 10.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty.** If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the

non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction.

**Section 10.3. Repairs for Damage Caused by One Owner.** If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2, above, without cost to the adjoining Owner.

**Section 10.4. Other Changes.** In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

**Section 10.5. Right to Contribution Runs with the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 10.6. Dispute.** In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute.

## **ARTICLE XI**

### **POWERS AND DUTIES OF THE ASSOCIATION**

**Section 11.1. Discretionary Powers and Duties.** The Association shall have the following powers and duties which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restriction or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such an enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;

(b) to provide such light as the Association may deem advisable on streets and the Common Area and to maintain any and all improvements, Structures or facilities which may exist or be erected from time to time on the Common Area;

(c) to use the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;

(d) to mow and re-sow or re-seed or re-sod lawn areas and fertilize lawn areas within the Common Areas;

(e) care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the Private Street and maintaining the street lights located in the Common Areas;

(f) to exercise all rights, responsibilities and control over any easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article VIII herein;

(g) to create, grant and convey easements and licenses upon, across, over and under all Common Area, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(h) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(i) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;



(j) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property, including without limitation (i) maintenance and repairs of all storm water drainage infrastructure, including without limitation retaining walls, and (ii) all utility repairs, and erosion control repairs.

(k) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article V herein; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry;

(l) to re-subdivide and/or adjust the boundary lines of the Common Area but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(m) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations; and

(n) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

**Section 11.2. Mandatory Powers and Duties.** The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupiers of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to or at the direction of the Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) after the termination of the Class B membership, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that

will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area, private streets and access easements (AE) existing on the Property or shown on any Plat, and other easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence;

(e) to provide for the maintenance and repair of any and all (i) Common Areas and improvements which may exist or be erected from time to time on the Common Area, including but not limited to street lights (including the payment of utility costs therefor), recreational facilities, entrance features, entrance ways, entrance areas, stormwater management facilities, including sand filters, retaining walls and sound walls, (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, (iii) any Private Street or access easements (AE) existing on the Property or shown on any Plat; (iv) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association, and (v) street lights that may be constructed within the rights-of-way of any public streets within or adjacent to the Property, including those, if any, required to be maintained by Local Governing Authorities (including the payment of utility costs therefor);

(f) to arrange for plowing and/or removal of snow from (i) private streets located within Common Areas, (ii) community walkways located within Common Areas, and (iii) driveways located upon Lots. It shall be each Owner's responsibility, however, to remove snow from the walkway extending from the community walkways to the front door of the Owner's Dwelling Unit;

(g) to mow, trim, and fertilize grass located on each Lot; provided, however, that the Association shall not be required to maintain, replace, irrigate, or fertilize any flowers, plants, trees, shrubs, or any landscaping other than grass;

(h) to paint all wood exterior trim, but shall not be responsible for any other maintenance of the exterior of a Dwelling Unit;

(i) to pay all proper bills, taxes, charges and fees on a timely basis; and

(j) to maintain its corporate status.

**Section 11.3. Board Authority to Act.** Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose

in accordance with the By-Laws.

**Section 11.4. 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 Class A Members.

**Section 11.5. Non-liability of Directors, Officers and Board Members.** The directors and officers of the Association and members of the Architectural Review Board 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 or members of the Architectural Review Board, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

**Section 11.6. Indemnity of Directors and Officers and Members of the Architectural Review Board.** The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association or member of the Architectural Review Board, against all costs and expenses, including attorneys fees, actually and reasonable 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 or member of the Architectural Review Board 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, officer or member of the Architectural Review Board 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 Section.

## **ARTICLE XII**

### **RIGHTS OF MORTGAGEES**

Unless a right is waived by the appropriate Federal Agency, all Mortgagees shall have the following rights:

**Section 12.1. Veterans Administration.** If any of the Lots are security for a loan guaranteed by the Veteran's Administration (the "VA") and if there is a Class B Member:

(a) The Declarant must provide a copy of all amendments to the VA. The Association may not make any Material Amendment or take any Extraordinary Action as such terms are defined in Article XIII without the approval of the VA.

(b) Eligible Mortgagees shall have the following rights:

(i) the right to inspect Association documents and records on the same terms as the Members;

(ii) notice of any Material Amendment to the Association documents;

(iii) notice of any extraordinary Action of the Association;

(iv) notice of any property loss, condemnation or eminent domain proceeding affecting the Common Area resulting in a loss greater than ten percent (10%) of the annual budget or affecting any Lot insured by the Association in which the Eligible Mortgagee has an interest;

(v) notice of any termination, lapse or material modification of an insurance policy held by the Association;

(vi) notice of any default by an Owner of a Lot subject to a mortgage held by the Eligible Mortgagee in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;

(vii) notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before any action is taken;

(viii) the right of a majority of the Eligible Mortgagees to demand professional management; and

(ix) the right of a majority of the Eligible Mortgagees to demand an audit of the Association's financial records.

**Section 12.2. Federal Housing Authority.** If any of the Lots are security for a loan insured by Federal Housing Authority (the "FHA") and if there is a Class B Member, the following actions will require the prior approval of the FHA:

(a) annexation of additional properties;

(b) mergers, consolidations and dissolution of the Association;

(c) mortgaging or conveyance of the Common Area; and

- (d) amendment of this Declaration.

**Section 12.3. Freddie Mac.** Assuming that Mortgagees may securitize pools of mortgages, including mortgages on Lots and/or Dwelling Units in the Community, with the Federal Home Loan Mortgage Corporation (a/k/a "Freddie Mac"), the following requirements shall apply to all Lots and Dwelling Units in the Community:

(a) Unless at least two-thirds (2/3rds) of the first Mortgagees (based on one vote for each first mortgage owned) or two-thirds of the Class A Members have given their prior written approval, the Association shall not take any of the following actions:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The re-subdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer or subdivision within the meaning of this clause;

(ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

(iii) by act or omission waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units and their appurtenances, the exterior maintenance of Dwelling Units and their appurtenances, the maintenance of the Common Area, common fences and driveways, and the upkeep of lawns and plantings in the Property;

(iv) fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value;

(v) use hazard insurance proceeds for losses to the Common Area or other Association property for other than the repair, replacement or reconstruction of such property.

(b) A Mortgagee shall be given written notification from the Association of any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default.

(c) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.

(d) The assessments imposed by the Association shall include an adequate reserve fund for maintenance, repairs and replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by Special Assessment.

**Section 12.4. Fannie Mae.** Assuming that Mortgagees may secure funding for mortgage loans by selling mortgage loans, including mortgages on Lots and/or Dwelling Units in the Community, to the Federal National Mortgage Association (a/k/a "Fannie Mae"), the following requirements shall apply to all Lots and Dwelling Units in the Community:

(a) A Mortgagee shall be given written notification from the Association of the following:

(i) any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot that is the security for the indebtedness due the Mortgagee;

(ii) any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default;

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

(iv) any proposed action that would require the consent of a specified percentage of Mortgagees.

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the Association that it has relied on the value of the improvements in making a loan on a portion or all of the Property, then subject to the right of the Declarant to annex additional areas as provided in Article XIII herein, unless at least sixty-seven percent (67%) of the Members and Mortgagees representing at least fifty-one percent (51%) of those Lots that are subject to mortgages or deeds of trust have given their prior written approval, the Association shall not add or amend any material provision of this Declaration or related Association documents concerning the following:

(i) voting rights of any Member;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis;

(iv) responsibility for maintenance and repair of the Property;

(v) reallocation of interests in the Common Area or rights to its use, except as provided in Article III and Article IV herein;

(vi) converting Lots into Common Area or vice versa;

(vii) annexation or withdrawal of property to or from the Property (other than annexation of those properties referred to in Article XIII);

- (viii) insurance or fidelity bonds;
- (ix) leasing of Dwelling Units;
- (x) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey its property;
- (xi) a decision by the Association to establish self-management when professional management has been required previously by a Mortgagee;
- (xii) restoration or repair of the Property after a hazard damage or partial condemnation;
- (xiii) any provisions that are for the express benefit of Mortgagees; and
- (xiv) termination of the legal status of the Association after substantial destruction or condemnation of the subdivision occurs.

An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of clarification or correcting errors. A Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days of receipt of such request shall be deemed to have approved such request.

**Section 12.5. General.**

- (a) **Condemnation.** In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property.
- (b) **Unpaid Assessments.** Any Mortgagee, who obtains title to a Lot pursuant to the remedies provided in its mortgage or deed of trust or foreclosure of the mortgage or deed of trust or deed in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.
- (c) **Books and Records.** A Mortgagee shall have the right to examine and copy at its expense the books and records of the Association during normal business hours and upon reasonable notice to the Association.
- (d) **Notice.** As set forth in this Article, Mortgagees shall have the right, upon request, to receive notice of (a) the decision of the Owners to abandon or terminate the Planned Unit Development (as defined by Fannie Mae); (b) any material amendment to the Declaration, the By-Laws or the Articles of Incorporation; and (c) if professional management has been required by a Mortgagee, the decision of the Association to terminate such professional management and assume self-management.
- (e) **Excess Proceeds.** Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be

distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

(f) **Audited Financial Statement.** The Association must provide an audited financial statement for the preceding fiscal year to a Mortgagee upon its written request.

(g) **Termination.** Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property.

(h) **Damage to Common Area.** The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area unless a decision not to repair, reconstruct or renovate is approved by a majority of the Mortgagees.

### **ARTICLE XIII**

#### **GENERAL PROVISIONS**

**Section 13.1. Enforcement and Declarant's Exemption.** The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Notwithstanding anything in this Declaration to the contrary, (i) the Declarant and any Designated Builder reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant, on any part of the Property owned by the Declarant, a Designated Builder, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Declaration shall be construed, in any manner, to limit any activity of the Declarant or a Designated Builder in the construction, development, and sales activities pertaining to the Property.

**Section 13.2. Severability; Headings; Conflict.** Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, the Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

**Section 13.3. Duration.** The covenants and restrictions of this Declaration shall run with and



bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved of in advance by the affirmative and unanimous vote of all Members of the Association and their respective Mortgagees.

**Section 13.4. Material Amendment/Extraordinary Action.**

(a) **Approval Requirements.** In accordance with Federal Agencies' requirements, material amendments ("**Material Amendments**") or extraordinary actions ("**Extraordinary Actions**") must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the By-Laws, such vote including the vote of a majority of the Class A Members present and voting, in person or by proxy, at such meeting.

(b) **Material Amendment.** A Material Amendment includes adding, deleting or modifying any provision regarding the following:

- (i) assessment basis or assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual Owners;
- (iii) reserves for maintenance, repair or replacement of common area improvements;
- (iv) maintenance obligations;
- (v) allocation of rights to use Common Areas except as provided in Article III and Article IV herein;
- (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;
- (vii) reduction of insurance requirements;
- (viii) restoration or repair of common area improvements;
- (ix) the annexation or withdrawal of land to or from the Property other than annexation or withdrawal of those properties referred to in this Article XIII;
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a Lot; or
- (xii) any provision which is for the express benefit of Mortgagees.

(c) **Extraordinary Action.** Alternatively, an Extraordinary Action includes:

(i) merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to this Association);

(ii) determining not to require professional management if that management has been required by the Association documents, a majority of eligible Mortgagees or a majority vote of the Members;

(iii) expanding the Association to include land not previously described as annexable which increases the overall land area of the project or number of Lots by more than ten percent (10%);

(iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring the Common Area except for (i) granting easements; (ii) dedicating Common Area as required by a public authority; (iii) re-subdividing or adjusting the boundary lines of the Common Area or (iv) transferring Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association;

(v) using insurance proceeds for purposes other than reconstruction or repair of the insured improvements; or

(vi) making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.

(d) **Class Amendments.** Any Material Amendment which changes the rights of any specific class of Members must be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members of such class present and voting, in person or by proxy, at a meeting held in accordance with the requirements contained in the By-Laws.

(e) **Material Amendment and/or Extraordinary Actions Amendments.** The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Class A Members:

(i) termination of this Declaration or the termination of the project;

(ii) dissolution of the Association except pursuant to a consolidation or merger; and

(iii) conveyance of all Common Areas.

(f) **VA Amendments.** If the VA has guaranteed any loans secured by a Lot, so long as there is a Class B Member all Material Amendments and Extraordinary Actions must have the approval of the VA.

**Section 13.5. Amendment.** Amendments other than Material Amendments or

Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members.

Any amendment must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

**Section 13.6. Special Amendment.** Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant and/or a Designated Builder and thereafter may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

**Section 13.7. Waiver.** The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Marion County, Indiana.

**Section 13.8. Casualty Insurance.** Notwithstanding anything to the contrary contained in this Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitations any Party Walls. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association a renewal or replacement policy in form and content acceptable to the Association. If any such Owner fails to provide evidence of such coverage satisfactory to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

**Section 13.9. Withdrawable Real Estate.**

(a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Dwelling Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Declaration.

(b) Upon the dedication or the conveyance to any public entity or authority of any

portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

**Section 13.10. Management Contracts.** For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter- into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

**Section 13.11. Dissolution.** The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

WITNESS the following signatures:

NORTHPOINT VILLAGE LLC  
an Indiana limited liability company

By: 

J. Brian Mann, Manager

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )



Before me, a Notary Public in and for said County and State, personally appeared J. Brian Mann, by me known be the President of Northpoint Village LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "Declaration of Covenants, Conditions and Restrictions for Northpoint Village Townhomes" on behalf of said corporation.

Witness my hand and Notarial Seal this 29<sup>th</sup> day of November 2004.

My Commission Expires:  
Apr 11 2009

[Handwritten Signature]  
Notary Public

My County of Residence:  
Marion

Linda K. Hatmann  
Printed Signature

**This instrument was prepared by and after recording return to:**

Mann Properties LLP  
8653 Bash Street  
Indianapolis, IN 46256

## Exhibit A

### Northpoint Village Townhomes Legal Description

Part of the Southwest Quarter of Section 20, Township 17 North, Range 3 East in Marion County, Indiana, described as follows:

Commencing at a Harrison marker at the Northwest corner of said Southwest Quarter; thence North 89 degrees 11 minutes 41 seconds East (bearing based on Indiana State Plane Coordinate System) along the North line of said Southwest Quarter a distance of 566.69 feet to the Northwest Corner of a 1.21 acre land tract described as Exception "C" in a Warranty Deed recorded as Instrument number 2003-0136319 in the office of the Marion County Recorder (the following two courses being along the westerly and southerly lines of said land tract); 1) thence South 20 degrees 02 minutes 35 seconds East parallel with the centerline of Michigan Road a distance of 236.01 feet; 2) thence North 78 degrees 16 minutes 11 seconds East a distance of 258.50 feet to the centerline of Michigan Road; thence South 20 degrees 02 minutes 35 seconds East along said centerline a distance of 1123.35 feet to the Southeast corner of Northpoint Village, Section One, the plat of which was recorded December 8, 2003 as Instrument #03260100, said corner being the Point of Beginning (the following three courses being along the southern lines of said Northpoint Village); 1) thence South 68 degrees 50 minutes 36 seconds West a distance of 224.97 feet; 2) thence South 77 degrees 21 minutes 22 seconds West a distance of 337.85 feet; 3) thence South 71 degrees 42 minutes 50 seconds West a distance of 231.35 feet; thence South 00 degrees 45 minutes 18 seconds East a distance of 194.08 feet to the north line of the land tract described as Exception "A" in the Warranty Deed recorded as Instrument number 2003-0136319; thence North 89 degrees 14 minutes 42 seconds East along said North line and parallel with the South line of the West Half of said Southwest Quarter, a distance of 809.97 feet to the East line of the West Half of said Southwest Quarter; thence North 89 degrees 14 minutes 42 seconds East along the South line of a 0.277 acre land tract described as Parcel I in said Warranty Deed a distance of 96.20 feet to the centerline of Michigan Road; thence North 20 degrees 02 minutes 35 seconds West along said centerline a distance of 436.28 feet to the Point of Beginning. Containing 5.910 acres, more or less.

12-12-03

MARTHA A. WOMACKS  
MARION COUNTY RECORDER

31

702446 DEC-88

DAILY EN-...  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE NORTHPOINT VILLAGE SUBDIVISION**

THIS DECLARATION (Declaration") is made this 7<sup>th</sup> day of November, 2003,  
by Northpoint Village LLC, an Indiana limited liability company ("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 "Initial Real Estate").

2. Developer intends to subdivide the Initial Real Estate into residential lots.

3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain covenants, conditions and restrictions for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.

4. Developer further desires to create an organization to which shall be assigned the responsibility for 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 subdivision plats of the Initial Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana and of collecting and disbursing assessments and charges as herein provided.

5. Developer may from time to time subject additional real estate located within the tracts adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate" or the "Subdivision").

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used, and occupied subject to the following covenants, conditions and restrictions, 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.



APPROVED THIS 4th

DAY OF Dec 20 03

PIKE TOWNSHIP ASSESSOR

Page 1 DRAFTSMAN JD

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE NORTHPOINT VILLAGE SUBDIVISION

**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 The Northpoint Village Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will hereafter cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review body established pursuant to Paragraph 6.1 of this Declaration.

1.3 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time.

1.4 "Common Expenses" means (i) expenses associated 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 located on a Drainage, Utility or Sanitary Sewer Easement or on a Landscape Easement to the extent the Association deems it necessary to maintain such easement, (ii) expenses associated with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sanitary Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance provided for herein and (v) all expenses incurred in the administration of the Association or the performance of the terms and provisions of this Declaration.

1.5 "Developer" means Mann Properties, LLP, an Indiana limited liability partnership, and any successors or assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "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 Lot within the Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
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1.7 "Landscape Easements" means those areas of ground so designated on a Plat of any part of the Real Estate established for the purpose of providing community landscaping amenities and maintaining landscaping required by regulatory approvals.

1.8 "Lot" means any parcel of the Real Estate (excluding the Common Areas) which is designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plat; specifically excluding, however, parcels of real estate designated as "Blocks".

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

1.10 "Original Builder" means the homebuilder to which the Developer initially conveys the Lots.

1.11 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding for all purposes those persons or entities having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. The term Owner as used herein shall include Developer so long as Developer shall own any Lot 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 Marion County, Indiana.

1.13 "Real Estate" means the Initial Real Estate, and all or such portion of any additional real estate as has, from time to time, been subjected to this Declaration.

1.14 "Residence Unit" means any single-family home constructed on any part of the Real Estate.

1.15 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Developer or its successors and assigns, and recorded in the public records of Marion County, Indiana, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.16 "Tree Preservation Easement" shall mean those areas denoted on the face of the Plat as Tree Preservation Easements, which are created for the purpose of maintaining the

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NORTHPOINT VILLAGE SUBDIVISION

existing tree and shrub vegetation in its natural state. No existing trees or shrubs may be removed from these Easements except for the removal of dead or diseased plant material. Wherever Tree Preservation Easements may coincide with other easements, such as drainage, utility or access easements, any tree or shrub trimming or removal shall be the minimum amount necessary to achieve suitable drainage, utility installation or access within the Tree Preservation Easement.

1.17 "Utility, Drainage or Sanitary Sewer Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

### ARTICLE II

#### APPLICABILITY

2.1 All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the applicable covenants, conditions and restrictions 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.

2.2 The Owner of any 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 other builder or any other 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 and restrictions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants, for such Owner, such Owner's heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions and restrictions 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 related Residence Unit, subject to the following provisions:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE NORTHPOINT VILLAGE SUBDIVISION

(i) the right of the Association to charge reasonable fees for the use of any recreational facilities situated upon the Common Areas which are in addition to the regular and special assessments described herein;

(ii) the right of the Association to fine any Owner or make a special assessment against any Lot in the event a person permitted to use the Common Areas by the Owner of such Lot violates any rules or regulations of the Association;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Areas or grant easements therein 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;

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

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 use and enjoyment of the Common Areas subject to the terms of this Declaration and any rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Developer may at any time and from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association by warranty deed, and such Common Areas so conveyed shall then be the property of the Association; provided, however, that the Common Areas for the Initial Real Estate and any additional lands added by Supplemental Declaration, respectively, shall be conveyed to the Association on or before the time that the first Lot within the Initial Real Estate or such additional land, respectively and as the case may be, is conveyed for residential use. Developer may also convey a part of Common Area "A" as designated on the face of the Plat to the Indianapolis Parks Department or its designee to be developed and operated as a public park. At such time as the part of Common Area "A" is conveyed to the Indianapolis Parks Department or its designee, the real estate within its boundaries shall no longer be subject to this Declaration and all rights and responsibilities established in this Declaration for the Owners of Lots shall be terminated as to that part of Common Area "A."

3.4 Easements for Developer.

(a) During the Development Period, Developer shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of

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constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvement thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.

(b) In addition to the easement set forth in Section 3.4 (a), Developer hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.5, below (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Developer under this Section 3.4(b) shall be transferable by Developer to any person or entity solely at the option and benefit of the Developer, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Developer may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Developer and others to whom Developer may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The Easements, rights and privileges reserved under this Section shall be for the exclusive benefit of Developer, its successors and assigns and may not be impaired, limited or transferred, sold or granted to any person or entity by the Association or any of the Owners.

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3.5 Drainage, and Utility Easements.

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas; and (ii) those portions of all Lots designated on the Plat as "D&UE" and as otherwise are reasonably necessary (such areas herein referred to collectively as the "Utility Easement Areas") for installing, replacing, repairing, and maintaining, the following specified services, and no other:

<u>Name of Specific Provider:</u>	<u>Specific Service:</u>
Indianapolis Power & Light	Electricity
Indianapolis Water Company	Water
City of Indianapolis	Sewer
Vectren	Natural Gas
Ameritech	Telephone
Insight Communications	Cable

The Developer, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems, shall be made by Developer in accordance with the rights reserved to Developer under Section 3.4(b), above. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

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(b) Developer hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements in those areas designated on the Plat which easements shall run in favor of Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

3.6 Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

3.7 Landscape Easements. Landscape Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to a Landscape Easement which does not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

3.8 Lake Maintenance Access Easement and Emergency Access Easement. There may be strips of grounds as shown on the Plat marked Lake Maintenance Access

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Easement (L.M.A.E.) and Emergency Access Easement (E.A.E.), which are created and reserved: (a) for the use of the Developer during the Development Period for access to the Common Area or the Lakes and (b) for the nonexclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lakes. The Owner of any Lot which is subject to an L.M.A.E. or E.A.E. shall be required to keep the portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

3.8 Medians and Entry Features. There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as a Landscape Easement. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

3.9 Sales and Construction Offices. 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 Marion County, Indiana, Developer, any entity related 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, the Association 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 or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

3.10 Signs. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat Covenants with respect to signs during the Development Period. The Developer and its designees 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.

3.11 Maintenance Easement. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and

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appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

**ARTICLE IV**

USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating, or fishing in or on or other recreational use of any lake, pond, creek, ditch or stream on the Real Estate, unless otherwise allowed by the Association. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

4.2 Use of Common Areas. Subject to section 4.1 above, the Common Areas shall be used only for recreational purposes and other purposes permitted or sanctioned by the Association. Certain Common Areas are or shall be designed as buffer areas from adjoining lands or as landscaped areas for aesthetic enjoyment only. Common Areas established for the purpose of community landscaping, such as entry walls and entry landscaping, shall not be used for active recreational purposes.

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

4.4 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contain additional restrictions on the use of the Lots in the Subdivision, including, without limitation, prohibitions against commercial use, detached accessory buildings and nuisances; restrictions relating to the use of Landscape Easements, and Utility, Drainage and Sanitary Sewer Easements; and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

4.5 Minimum Living Space Areas. The minimum square footage of living space of Residence Unit constructed on Lots in the Development, exclusive of porches, terraces, garages, carports, accessory buildings or portions thereof, or similar facilities not modeled and decorated for regular and continuous habitation, shall be at least 1,150 square feet for a one-story home and at least 1,450 square feet for a two-story home. Basements shall not be included in the computation of the minimum living area.



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A. Residential Setback Requirements.

(i) Front Setbacks. Unless otherwise provided in these restrictions or on the recorded Plat, all dwelling houses and above-ground structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines, as established on the Plat of the Development.

(ii) Side Yards. The side yard setback lines shall be consistent with the applicable district requirements of the Marion County Zoning Ordinance unless otherwise approved by the Committee and the Board of Zoning Appeals.

(iii) Rear Yards. The rear setback line shall be consistent with the applicable district requirements of the Marion County Zoning Ordinance unless otherwise approved by the Committee and the Board of Zoning Appeals.

B. Mailboxes and Landscaping. Any mailboxes must be approved by the Committee as to size, location, height, and composition before it may be installed. A standard mailbox design will be established by the Committee. Address numbers shall be permanently affixed on each mailbox in a manner consistent with the requirements of the Committee. Mailbox placement may be undertaken without special review if the proposed type and placement conforms to the standard design. Front yards along the front foundation of the Residence Unit shall contain six (6) bushes or similar plants with a minimum height of 18 inches and at least one (1) deciduous tree having a caliper of not less than two inches. Rear yards shall have at least one (1) deciduous tree having a caliper of not less than two inches.

C. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding, T-111 plywood sheet, or aluminum siding, or any other similar material. All driveways must be concrete. All exterior building materials are to be of an aesthetically pleasing natural earth tone. Vinyl siding used shall have a minimum thickness of .040" and a minimum 5/8" butt.

D. Garages Required. All residential dwellings in the Development shall include an enclosed attached two-car garage minimum.

E. Heating Plants. Every Residence Unit in the Development must contain a heating plant, installed in compliance with the required codes, and capable of providing adequate heat for year-round human habitation of the house.

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F. Diligence in Construction. Every building whose construction or placement on any residential Lot in the Development shall be completed within nine (9) months after the beginning of such construction or placement. No improvement that 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.

G. Sales of Lots by Developer. Every lot within the Development shall be sold to a builder or individual approved by the Developer or developed by the Developer.

H. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such lot.

I. Maintenance of Lots and Improvements. The Owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(vi) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.

(vii) Mow and maintain grass in any part of the street right-of-way that abuts the front yard of any Lot.

J. Sidewalk. Prior to occupancy, the owner of each lot of the subdivision shall construct a concrete sidewalk parallel to the owner's street frontage(s) on the owner's lot

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which shall extend from one side of the property to the other side of the property. The Committee shall approve the location of the sidewalk.

K. Above-Ground Swimming Pools Prohibited. No aboveground swimming pools shall be permitted to be constructed on any lot. The Committee shall determine whether or not a pool shall be defined as aboveground.

L. Fencing. The Committee shall adopt and promulgate rules and regulations regarding the application for fence approval and the placement and installation of fences. Said rules and regulations may change from time to time, as necessary. Exposed galvanized chain link fencing is prohibited. However, fences constructed of black vinyl-coated chain link, picket, shadow box or wrought iron shall be permitted, subject to prior approval by the Committee. Other fencing types and materials not listed herein may be considered for approval by the Committee on a case-by case basis. No fences taller than 4 feet will be approved on lake lots. Maintenance of fencing within Common Areas will be the responsibility of the Association. No fencing will be allowed to be placed by any Lot Owner within any Landscape Easement at any Subdivision entry or along Michigan Road. Fencing to be installed in yards abutting Michigan Road shall conform to the fence design and placement requirements promulgated by the Committee.

M. Outbuildings. No freestanding detached outbuildings will be permitted, including but not limited to, storage sheds, mini-barns or garages.

N. Satellite Dishes. No television satellite antenna dishes any larger than 24" in diameter shall be permitted on any lot. All ground-mounted dishes must be placed behind the front building line and must be screened from adjoining neighbor's primary view to the extent that such screening will not interfere with the satellite signal to the dish. No roof or building mounted satellite dish may be mounted on a front-facing wall or roof.

O. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.

P. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs.

Q. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. No dog runs shall be permitted.

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R. Vehicle Parking. No trucks larger than one (1) ton in payload size, inoperable vehicles, campers, trailers, boats, or similar vehicles shall be parked in any driveway or on any street in the Development. Motor homes and recreational vehicles may be parked in a driveway for a period not exceeding 24 hours for loading or unloading the vehicle. No vehicles shall be parked on any street overnight.

S. Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his lot. All Residence Units built in the Development shall be equipped with a garbage disposal unit.

T. Model Homes. No Owner of any Lot in the Development shall build or permit the building upon said lot of any Residence Unit that is to be used as a model home or exhibit house without written permission to do so from the Developer.

U. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

V. Open Drainage, Ditches and Swales.

(i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate authority. By accepting a deed to a Lot, the Owner accepts the grading and drainage of the Lot in an "as is" condition, and the Developer has no further obligation to construct or maintain the open drainage on the Lot. Property owners must maintain any part of these swales as may occur on their Lots as sodded grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said such water will not damage drainage swales or ditches. Driveways may be constructed over swales or ditches only when appropriately sized culverts or other approved structures have been permitted by the appropriate authority.

(ii) Any property Owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the Association shall have the right but not the obligation to cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment.

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W. Utility Services. No utility services shall be installed, constructed, repaired, removed, or replaced under finished streets, except by jacking, drilling or boring.

X. Wells and Septic Tanks. No water wells shall be drilled nor septic tanks and fields installed on any of the Lots in the Development.

Y. Dusk-To-Dawn Lighting. Each Lot shall maintain continuous dusk-to-dawn lighting to be controlled by a photocell. Said dusk-to-dawn lighting shall be placed either in the front yard on a freestanding pole located not more than ten (10) feet from the edge of the driveway; or twin carriage lights mounted on either side of the garage door if fronting the street.

**ARTICLE V**

ASSOCIATION

5.1 Membership. Each Owner shall automatically become a member of the Association and shall remain a member of the Association so long as he or she owns a Lot.

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 immediately following subparagraph). Each Class A member shall be entitled to one (1) vote per Lot owned.

(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 Lot owned by Developer. The Class B membership shall cease and be converted to Class A membership upon the Applicable Date (as defined in Section 5.3 below).

5.3 Applicable Date. The term "Applicable Date" shall mean when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or the expiration of the Development Period, whichever shall first occur.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an

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interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote and no Lot's vote shall be split.

5.5 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.

5.6 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 as provided therein, but in any event, with at least ninety (90) days prior written notice.

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

(i) Maintenance of the Common Areas including any and all improvements thereon as the Association deems necessary or appropriate.

(ii) Maintenance, including lease payments, of any street lighting located within the street right-of-way or within an appropriate easement along a street within the Development.

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

(iv) Maintenance, repair and replacement of any entrance streetlight, any private street signs and any private streets which may be shown on any Plat of a part of the Real Estate as Common Area.

(v) Replacement of the drainage system in and upon the Common Areas 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 each Owner of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on such Lot free from obstructions so that the storm water drainage will be unimpeded.

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(vi) Maintenance of lake water so as not to create stagnant or polluted waters affecting the health and welfare of the community.

(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.

(viii) Assessment and collection from the Owners and payment of all Common Expenses.

(ix) Performing or contracting for property or Association management, snow removal, Common Area maintenance, trash removal or other services as the Association deems necessary or advisable.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and any applicable zoning or other recorded covenants, in each case, as the Association deems necessary or advisable.

5.8 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, in each case as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges or fines against any Owner 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.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her 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.

5.10 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.

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5.11 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") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he 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 or to enforce the indemnity rights contemplated hereby 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 such 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 accountant, attorney or other person or firm employed or retained 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 any meetings of the Board of Directors of the Association. The costs and expenses incurred by any 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 section 5.11.

**ARTICLE VI**

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established an 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



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Association. The three persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots but need not be members of the Board of Directors. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee upon a majority vote of the members of the Board of Directors.

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

(i) In General. No residence, building, structure, antenna, walkway, fence, deck, pool, tennis court, basketball goal, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or modified, changed or altered 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 the proposed improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly 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 permitted by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application (a "Requested Change") made to it when:

(a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration or the Plat Covenants and Restrictions applicable to any part of the Real Estate;

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(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 Residence Units or related improvements; or

(c) The Requested Change 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 or building policies or procedures 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 Requested Changes.

6.3 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within forty-five (45) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. 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, the Developer nor any agent or member 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 in connection with a Requested Change 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 designee 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 an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

## **ARTICLE VII**

### **ASSESSMENTS**

7.1 Purpose of Assessments. Each Owner of a Lot by acceptance for itself and related entities 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 for his obligation for (i) regular assessments

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for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. The general purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following specific 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, Landscape Easements, Drainage, Utility or Sanitary Sewer Easements and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any, capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots within the Subdivision.

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 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Two Hundred Seventy Five Dollars (\$275.00).

(ii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) per year above the Regular Assessment for the previous calendar year without a vote of the members of the Association.

(iii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, 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 and held for such purpose.

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(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 incur, but only with the assent of a majority 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 and held for such purpose.

7.4 No Assessment against Developer or Original Builder. Neither the Original Builder, the Developer nor any affiliated entity shall be assessed any portion of any Regular or Special Assessment during the Development Period. The Original Builder shall not be assessed any portion of any Regular or Special Assessment for a period of 12 months after the end of the Development Period.

7.5 Date of Commencement of Regular or Special Assessments, Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner, provided that, in the case of the conveyance by Developer of a Lot to any builder in the Subdivision not related to Developer, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to such builder.

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 installment periods and 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.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuser of the Common Areas or abandonment of the

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Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment (as described in section 7.7 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. 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 on the first day of each month 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 Lot costs and expenses of such action incurred (including but not limited to attorneys fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this section 7.6 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 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, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. All Regular Assessments and Special Assessments, together with interest, costs of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any 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 attorneys' fees, shall also be the personal obligation of the Owner of the 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 Lot) 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 Lot, shall furnish to such Mortgagee or purchaser a statement

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setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sanitary Sewer Easement Deemed a Special Assessment. As provided in the Plat Covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sanitary Sewer Easement including any builder, shall be required to keep the portion of said Drainage, Utility or Sanitary Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Developer and the Association. Also, no structures or improvements, including without limitation decks, patios, pools, fences, walkways or landscaping of any kind, shall -be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's or the Association's written request, be promptly removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of such written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer or the Association may enter upon the Lot and cause such obstruction, structure or improvement to be removed so that the Drainage, Utility or Sanitary Sewer Easement is returned to its original designed condition. In such event, Developer or the Association shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a special assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any Regular Assessment or Special Assessment may be collected.

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**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. 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 practicable, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) 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.

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. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee 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.

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 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 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

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Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Landscape, Drainage, Utility or Sanitary Sewer Easements located on the Lot, free of weeds, trash or construction debris and otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner reasonably satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to, enter upon said Lot and clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. 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 to the offending Owner for any damage which may result from any maintenance work performed hereunder. Trees, shrubs and flowers placed in any Landscape Easement by the Association shall be the responsibility of the Association to install and maintain. Lot Owners shall not prune, cut, remove or maintain any of the plant material installed within a Landscape Easement other than to mow and maintain the grass, except with express approval of the Association.

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 owns or is required to maintain hereunder, including without limitation any Subdivision improvement, such as fences or columns erected by the Developer in right-of-way areas, the Association shall repair or replace the same from the insurance to the extent of the availability of such 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. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas and other improvements if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, subcontractor, employee, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any other improvements maintained by the Association pursuant to this Paragraph 9.2, 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 constitute a special assessment against such Owner, whether or



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not a builder, and its Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

**ARTICLE X**

MORTGAGES

10.1 Notice to Mortgagee. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of any 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 may notify the Secretary of the Association by certified mail (return receipt requested) of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee 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 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 liens against any 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 with respect to any Lot may make the payment on behalf of the Association.

**ARTICLE XI**

AMENDMENT 8

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:

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(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 subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) of such votes. In any case, provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit within the Real Estate. In the event any Residence 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 provided the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing sub-section 10.2.

**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 technical 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, however, 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.

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11.3 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Paragraph 11.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Paragraph 11.1 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

**ARTICLE XII**

MISCELLANEOUS

12.1 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 Marion County, Indiana, 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 or restrictions. 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 and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

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

12.3 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 comprising the Real Estate 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, 2023, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall terminate or

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otherwise affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, conditions or restrictions 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.


12.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

12.6 Annexation. Additional land adjacent to the Real Estate may be annexed by Developer to the 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 by Developer in the Office of the Recorder of Marion County, Indiana, of a Supplemental Declaration, and such action shall require no approvals or other action of the Owners. Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Developer's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE NORTHPOINT VILLAGE SUBDIVISION


IN WITNESS WHEREOF, witness the signature of the Developer this 7<sup>th</sup> day of November, 2003.

"DEVELOPER"  
NORTHPOINT VILLAGE LLC  
an Indiana Limited Liability Company

By:   
Brian Mann  
Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for said County and State, personally appeared Brian Mann, as Manager of Northpoint Village LLC, an limited liability company (Developer herein), and acknowledged the execution of the foregoing instrument this 7<sup>th</sup> day of November, 2003.

 Notary  
Rachel L. Ambler (Printed)

Resident of Hamilton County, Indiana

My Commission Expires:  
9-27-08

This Instrument prepared by The Northpoint Village LLC, 8653 Bash Street, Indianapolis, IN 46256

RACHEL L AMBLER  
NOTARY PUBLIC STATE OF INDIANA  
HAMILTON COUNTY  
MY COMMISSION EXP. SEPT 27, 2008



REVISIONS  
 DATE BY  
 11/11/04 JRM  
 11/11/04 JRM  
 11/11/04 JRM

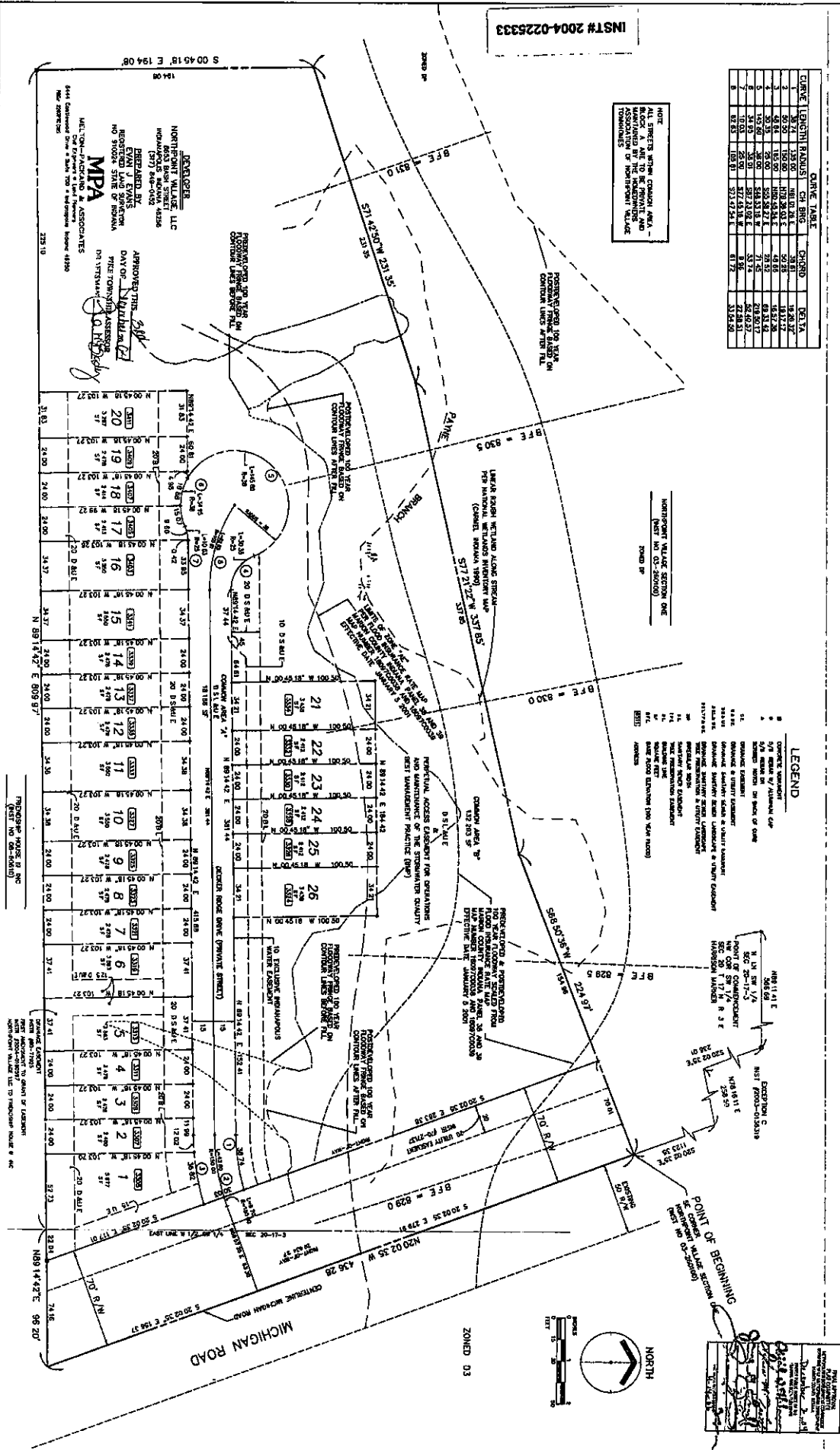
INST# 2004-0225333

**FINAL PLAT**  
**NORTHPOINT VILLAGE TOWNHOMES**  
 AN ADDITION TO PIKE TOWNSHIP, MARION COUNTY, INDIANA  
 ZONED : D P (RW, FPI)  
 SHEET 1 OF 2

**CLONE TABLE**

CLONE	LENGTH	RAJUSI	CH	BEG	END	DELTA
1	36.74	155.00	188.0	24.8	28.8	19.8337
2	42.87	150.00	170.0	26.0	42.0	19.1174
3	42.87	150.00	170.0	26.0	42.0	19.1174
4	30.53	25.00	50.0	30.0	25.0	49.3434
5	174.80	30.00	554.5	118.4	71.45	218.8617
6	174.80	30.00	554.5	118.4	71.45	218.8617
7	174.80	30.00	554.5	118.4	71.45	218.8617
8	82.40	100.00	272.4	118.4	8.95	42.4231
9	82.40	100.00	272.4	118.4	8.95	42.4231

NOTE: SETBACKS SHOWN ARE BASED ON THE DISTANCE FROM THE PROPERTY LINE TO THE NEAREST ADJACENT PROPERTY LINE. THIS PLAT IS SUBJECT TO THE REVISIONS AND AMENDMENTS OF THE MARION COUNTY ZONING ORDINANCES.



INST# 2004-0225333

**LEGEND**

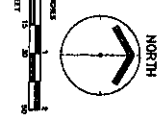
- 1. CONCRETE WALL
- 2. 5/8\"
- 3. 1/2\"
- 4. 1/4\"
- 5. 1/8\"
- 6. 1/16\"
- 7. 1/32\"
- 8. 1/64\"
- 9. 1/128\"
- 10. 1/256\"
- 11. 1/512\"
- 12. 1/1024\"
- 13. 1/2048\"
- 14. 1/4096\"
- 15. 1/8192\"
- 16. 1/16384\"
- 17. 1/32768\"
- 18. 1/65536\"
- 19. 1/131072\"
- 20. 1/262144\"
- 21. 1/524288\"
- 22. 1/1048576\"
- 23. 1/2097152\"
- 24. 1/4194304\"
- 25. 1/8388608\"
- 26. 1/16777216\"

**DEVELOPER**  
 NORTHPOINT VILLAGE, LLC  
 HOSPITALITY, INDIANA, USA  
 (317) 838-0000

**REGISTERED LAND SURVEYOR**  
 DAY OF: *Michael M. Day*  
 PRICE TOWNSHIP ASSESSOR  
 DAY OF: *Michael M. Day*  
 OS VLS#144444

**APPROVED THIS 24th DAY OF**  
*Michael M. Day*

**MPA**  
 MICHIGAN PROFESSIONAL PLANNING ASSOCIATES  
 1421 N. W. 10th Street, Suite 100, Indianapolis, Indiana 46202  
 TEL: 317-634-2400  
 FAX: 317-634-2401  
 WWW: MPA-INDIANA.COM



**Professional Seal**

*Michael M. Day*  
 Registered Land Surveyor  
 No. 144444  
 State of Indiana

MARION COUNTY  
 555 BIA S. RD. #4  
 MARION, INDIANA 46954  
 TEL: 317-375-1000  
 FAX: 317-375-1001









