

THIRD AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF PARC ESTATES

21

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PARC ESTATES ("AMENDMENT") is made as of this 21 day of November, 1997, by Parc Estates Homeowners' Association, Inc., an Indiana Corporation, WITNESSES as follows:

WHEREAS, the original Declaration of Covenants, Conditions, and Restrictions of Parc Estates was executed on May 27, 1992 by the Declarant, J & M Development Company and recorded on June 8, 1992 as Instrument No. 920072902 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Parc Estates was amended by the First Supplement to Declaration of Covenants, Conditions and Restrictions of Parc Estates dated October 2, 1992 and recorded on October 2, 1992 as Instrument No. 920131202 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Parc Estates was amended by the Second Supplement to Declaration of Covenants, Conditions and Restrictions of Parc Estates dated August 23, 1993 and recorded on August 25, 1993 as Instrument No. 1993-0122755 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Parc Estates was amended by the Plat Covenants and Restrictions of Parc Estates Section 4 dated July 21, 1993 and recorded on August 25, 1993 as Instrument No. 1993-0122757 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Article XI, section 11.1(iv) permits the amendment of the Declaration of Covenants, Conditions and Restrictions of Parc Estates with the approval of not less than two-thirds (2/3) of the Lot Owners; and

WHEREAS, the Board of Directors of Parc Estates Homeowners' Association, Inc. reviewed and affirmed the following Third Amendment to the Declaration of Covenants, Conditions and Restrictions of Parc Estates, which was approved by not less than two-thirds (2/3) of the Lot Owners.

NOW THEREFORE, pursuant to the foregoing, Parc Estates Homeowners' Association, Inc. hereby amends the Declaration as follows:

**INDEX\***  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

<b>TOPIC</b>	<b>PAGE #</b>
Architectural Control	10 - 12
Assessments	13
Driveways	5
Fences	5
Garages & Storage Buildings	5
Mailboxes	6
Nuisances	5
Use Restrictions	4
Satellite Dishes	6
Setback Lines	5
Signs	6
Swimming Pools	6
Vehicle Parking	5 & 7

\*Partial Index of the most frequently asked about topics

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

### PARC ESTATES

THIS DECLARATION is made this 27th day of May, 1992, by PARC ESTATES ASSOCIATES an Indiana limited partnership(the "Developer").

#### Recitals

1. Developer is the owner of certain real estate more particularly 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 as generally shown on the "Final Plat for Parc Estates Section I," as hereafter recorded in the office of the Recorder of Marion County, Indiana.
  3. Before so subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of all or any part thereof.
  4. Developer further desires to create an organ) to which shall be delegated and assigned the powers of maintaining and administering the Common Areas (hereinafter defined) and certain other areas of the Initial Real Estate administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plat of the Initial Real Estate as hereafter recorded in the office of Recorder of Marion County, Indiana, and collecting and distributing the assessments and charges as herein provided.
  5. Developer may from time to time subject additional real estate located within the tract adjacent to the Initial Real Estate, as more particularly described in Exhibit B attached hereto and made a part hereof, 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").
- NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, which shall run with the land and shall 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 the Real Estate, or any part thereof.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

Page 1

Declaration  
ARTICLE I

NAME  
The name by which the Real Estate shall be known is "Parc Estates."

DEFINITIONS

ARTICLE II

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

**2.1 "Association"** means Parc Estates Homeowners Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns."

**2.2 "Committee"** means Parc Estates Architectural Control Committee established pursuant to Article VIII, paragraph 8.1, of this Declaration for the purposes herein stated.

**2.3 "Common Areas"** means (i) all portions of the Real Estate (including improvements thereto) shown on any Plat of all or any part of the Real Estate which are not Lots and which are not dedicated to the public, (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time.

**2.4 "Common Expenses"** means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, maintenance, repair or replacement of the Common Areas and the improvements therein and thereon and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance, repair or replacement of the Landscape Easements and the drainage system located within and upon the Drainage Easements, (iii) all sums lawfully assessed against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses.

**2.5 "Developer"** means Parc Estates Associates, an Indiana limited partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including (without limitation) any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

**2.6 "Development Period"** means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (i) the date Developer no longer owns any Lot within or upon the Real Estate or (ii) the date which is three (3) years after the date on which all improvements and installations required by Chapter 4 of the Subdivision Control Ordinance of Marion County, Indiana, 58-AO-3, as amended, have been completed and, if applicable, accepted for public maintenance by any appropriate governmental unit or agency thereof.

**2.7 "Drainage Easements"** means those areas designated on any Plat of all or any part of the Real Estate as Drainage Easements, either separately or in combination with any other easement designated on such Plat.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 2**

**2.8 "Landscape Easements"** means those areas designated on any Plat of all or any part of the Real Estate as Landscape Maintenance Easements, either separately or in combination with any other easement designated on such Plat.

**2.9 "Lot"** means any numbered parcel of land shown and identified as a lot on any Plat of all or any part of the Real Estate.

**2.10 "Mortgagee"** means the holder of a recorded first mortgage lien on any Lot.

**2.11 "Nonaffiliated Owner"** means any Owner other than Developer or any entity related to Developer.

**2.12 "Owner"** means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot.

**2.13 "Plat"** means the subdivision plat of the Initial Real Estate identified as the "Final Plat for Parc Estates Section I," as hereafter recorded in the office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time), and any subdivision plat(s) for additional section(s) of Parc Estates which are hereafter recorded in the office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time).

**2.14 "Utility Easements"** means those areas designated on any Plat of all or any part of the Real Estate as Utility Easements, either separately or in combination with any other easement designated on such Plat.

**ARTICLE III**

**APPLICATION**

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

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this Declaration, and also for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

Page 3

**ARTICLE IV**

**PROPERTY RIGHTS**

**4.1 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 which shall run with and be appurtenant to each Lot, subject to the following:

- (i) The right of the Association (after conveyance of the Common Areas to the Association) to dedicate or transfer all or any part of the Common Areas 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, upon approval two thirds (2/3) of the membership of each class of members of the Association;
- (ii) The right of the Association to promulgate reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas;
- (iii) The rights of Developer as provided in this Declaration and in any Plat of all or any part of the Real Estate;
- (iv) and the terms and provisions of this Declaration;
- (v) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate.

**4.2 Declaration of Use.** Any Owner may delegate, in accordance with the By-Laws of the Association and any reasonable rules and regulations promulgated from time to time by the Association, his right of enjoyment of the Common Areas to his family members, his tenants or contract purchasers who reside on the Lot.

**4.3 Conveyance of Common Areas.** Upon final construction of or provision for the Common Areas, Developer shall convey all of its right, title and interest in and to the Common Areas to the Association by quitclaim deed, and such Common Areas shall then be the property of the Association.

**4.4 Utility Easements.** Developer hereby declares, creates and reserves the Utility Easements for the use of all -public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. No permanent structures shall be erected or maintained upon said Utility Easements.

**4.5 Drainage Easements.** Developer hereby declares, creates and reserves the Drainage Easements (i) for the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association and the Department of Public Works of the City of Indianapolis for access to and maintenance, repair or replacement of such drainage system; provided, however, that each Owner of a Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the surface water drainage will be

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 4**

unimpeded. No permanent structures shall be erected or maintained upon said Drainage Easements.

**4.6 Landscape Easements.** Developer hereby declares, creates and reserves the Landscape Easements (i) for the use of Developer during the Development Period for the installation or entrance structures, signs, fences, walls, earth mounds and other improvements and the planting or replacement of trees, foliage, landscaping and screening materials and (ii) for the use of the Association for access to and the installation, maintenance, repair and replacement of entrance structures, signs, fences, walls, earth mounds and other improvements and the planting, maintenance and replacement of trees, foliage, landscaping and screening materials. Except as installed by Developer or the Association, no improvements or permanent structures (including, without limitation, fences) shall be erected or maintained in or upon said Landscape Easements; and except as planted by Developer or approved by the Association, no foliage or landscaping shall be planted upon said Landscape Easements.

**4.7 Access Rights.** Developer hereby declares, creates and reserves an access easement over and across the entirety of the Real Estate (subject to the limitations hereinafter provided in this paragraph 4.7): (i) for the use of all public utility companies (not including transportation companies) and governmental agencies for access to the Utility Easements created and reserved herein, and (ii) for the use of Developer during the Development Period and for the use of the Association and the Department of Public Works of the City of Indianapolis for access to the Drainage Easements created and reserved herein. Notwithstanding the foregoing, the area of the access easement created by this paragraph 4.7 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement located on the Real Estate. The parties for whose benefit this access easement is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

**ARTICLE V**

**USE RESTRICTIONS**

**5.1 Lot Use and Size of Buildings.** Every Lot is a residential lot and shall be used exclusively for single-family residential purposes. No business buildings shall be erected on any Lot, and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any Lot, other than one detached single-family dwelling not to exceed two and one-half stories in height and permanently attached residential accessory buildings. Any attached garage, attached tool shed, attached storage building or any other attached accessory building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

The ground floor area of the main residential building, exclusive of one-story open porches and garages and other attached residential accessory buildings, shall not be less than one thousand two hundred (1,200) square feet in the case of a one-story building; provided, however, no residential building of more than one story shall have less than an aggregate of one thousand two hundred (1,200) square feet of finished and livable floor area.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 5**

**5.2 Setback Lines.** Building setback lines are established on the Plat(s) of the Real Estate. No building shall be erected or maintained between the established setback lines and the Lot lines of said Lot.

No building shall be erected closer to any side Lot line of any Lot than ten (10) feet (unless a greater setback line is established on any Plat of all or any part of the Real Estate), with each Lot having an aggregate side yard requirement of twenty (20) feet. In the event a building is erected on more than one single Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots. No building shall be erected closer to the rear Lot line of any Lot than twenty-five (25) feet (unless a greater setback line is established on any Plat of all or any part of the Real Estate).

**5.3 Garages and Storage Area.** No garage shall be erected which is not permanently attached to the main building. All residences are required to have a garage which will accommodate at least two (2) automobiles.

**5.4 Accessory and Temporary Buildings.** No trailers, shacks, outhouses. (Detached storage sheds or tool sheds are permitted with Architectural Approval.)

**5.5 Temporary Structures.** No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent. Nor may any structure of a temporary character be used as a residence.

**5.6 Nuisances.** No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot. No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**5.7 Fences.** No fence shall be erected on or along any Lot line or on any Lot, the purposes or result of which will be to obstruct reasonable vision, light, or air. All fences shall be kept in good repair and erected so as to enclose the Lot and decorate the same without hindrance or obstruction to any other property. All mental fencing must have a factory finish of either brown or black vinyl. No fence shall be higher than six (6) feet. No fencing shall extend forward of the furthest back front corner of the residence. Fencing style and color shall be consistent with the subdivision. No fencing shall be permitted in the Landscape Easements.

**5.8 Site Obstructions.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street and property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**5.9 Driveways.** All driveways shall be paved simultaneously with the construction of the residence, and the type of construction and materials must be first approved by the Committee.

**5.10 Vehicle Parking.** No camper, motor home, truck, trailer, boat, or recreational vehicle of any kind may be stored on any Lot in open public view.



**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 6**

- 5.11 Mailboxes** All mailboxes shall be in accordance with the standards set forth by the Committee and shall be installed by the builder simultaneously with the construction of the residence.
- 5.12 Signs.** No sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than six (6) square feet may be displayed for the purposes of advertising the property for sale. Open house signs from 5:00 p.m. Friday until 6:00 p.m. the following Sunday, will be permitted without express approval of the Board of Directors. Other signs will be removed at the expense of the homeowner
- 5.13 Vegetation.** Each Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot and shall keep his Lot reasonably clear from unsightly growth at all times. Failure to comply shall entitle (but not obligate) Developer, the Association or the Department of Metropolitan Development of Marion County, Indiana, to cut weeds and clear the Lot of such growth at the expense of the Owner, and any cost thereof incurred by the Association shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the enforcement of assessments generally.
- 5.14 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall at all times be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon.
- 5.15 Storage Tanks.** Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view.
- 5.16 Tree Preservation.** No trees may be removed from any Lot without the prior written approval of the Committee; provided, however, that nothing herein shall prevent the removal of trees by Developer or any entity related to Developer during its development of the Real Estate and during the construction by Developer or any entity related to Developer of a residence or accessory building on any Lot. Any such requests shall be made to the Committee in writing. In the event the Committee does not indicate in writing its approval or disapproval of requests for tree removal within thirty (30) days after submission of such request by the Owner, the Committee shall be deemed to have approved such request.
- 5.17 Water Supply and Sewage Systems.** No private or semi-private water supply and/or sewage disposal system may be located upon any Lot which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any Lot.
- 5.18 Antenna.** No antenna on any Lot shall exceed five (5) feet above a roof peak.
- 5.19 Satellite Dishes.** Satellite dishes may be installed with the location approved by the Architectural Control Committee prior to installation. (One meter or less, as per FCC ruling.)
- 5.20 Awnings.** No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot.
- 5.21 Swimming Pools.** Swimming pools shall be permitted with prior approval of the Architectural Control Committee..

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

Page 7

**5.22 Solar Panels.** No solar heat panels shall be permitted on roofs of any structures on any Lot. All such panels shall be enclosed within a fenced area and shall be concealed from the view of neighboring Lots and the streets.

**5.23 Modular Homes.** Modular-type construction shall not be permitted on any Lot.

**5.24 Lot Access.** All Lots shall be accessed from the interior streets of the subdivision.

**5.25 Parking Restriction.** No parking of automobiles, trucks or other vehicles shall be permitted in or on the Common Areas or in or on any public right-of-way within and upon the Real Estate located adjacent to a Common Area in connection with the use of Common Area; provided, however, that nothing herein shall prevent the temporary parking of public or quasi public vehicles or privately owned vehicles making deliveries or providing maintenance service to the Common Areas. To the extent permitted by applicable laws and ordinances, Developer hereby grants and reserves to the Association the right to promulgate and implement such rules and regulations as the Association deems necessary or advisable for the enforcement of the provisions of this paragraph 5.25, including levying fines for repeated or flagrant violation of such provisions.

**5.26 Use of Recreational Facilities.** The recreational facilities located within and upon the Common Areas shall not be used for commercial purposes.

**ARTICLE VI**

**ASSOCIATION**

**6.1 Membership.** Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

**6.2 Voting Rights.** Each class of membership of the Association shall have the respective voting rights set forth in this paragraph 6.2, provided they are in good standing.

(i) As used herein, the term "Applicable Date" shall mean the date which is the earlier of (a) the date on which the written resignation of Developer as a Class B member is delivered to the Secretary of the Association or (b) the date Developer no longer owns any Lot within or upon the Real Estate.

(ii) Until the applicable Date, the Class B membership shall exercise all voting rights with respect to any matter submitted to a vote of the members of the Association and shall have one (1) vote for each Lot of which Developer is the Owner.

(iii) From and after the Applicable Date, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot. Until the Applicable Date, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Association.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 8**

**6.3 Board of Directors.** The Board of Directors of the Association shall manage the affairs of the Association.

**6.4 Professional Management.** No contract or agreement for professional management of the Association, nor any other 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 fee, on written notice of ninety (90) days or less.

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

- (i) Installation and replacement of such improvements, foliage and landscaping in and upon the Common Areas as the Association deems necessary or appropriate, and maintenance of the Common Areas and any improvements therein and thereon in a clean and attractive condition and in good repair.
- (ii) Installation and replacement of such entrance structures, signs, fences, walls, earth mounds and other improvements and the planting and replacement of such trees, foliage, landscaping and screening materials in and upon the Landscape Easements as the Association deems necessary or appropriate and maintenance of said Landscape Easements and any installation thereon installed by Developer or the Association in a clean and attractive condition and in good repair.
- (iii) Replacement of the drainage system in and upon the Drainage Easements as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon said Drainage Easements by Developer or the Association in good condition and repair, subject, however, to the obligation of the Owner of a Lot subject to a Drainage Easement to keep the portion of the Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.
- (iv) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverage's required under this Declaration and such other insurance as the Association deems necessary or advisable.
- (v) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.
- (vi) Assessment and collection from the Owners of the Common Expenses.
- (vii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.
- (viii) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

**6.6 Compensation.** No director of the Association shall receive compensation for his services as such director, except to the extent expressly authorized by a majority vote of the Owners.

## DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS

Page 9

**6.7 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, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) unless any such contract shall have been made in bad faith. 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.

**6.8 Additional Indemnity of Directors and Officers.** The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such director or officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by 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 as provided in this paragraph 6.9.

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

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 10**

**ARTICLE VII**

**BOARD OF DIRECTORS**

**7.1 Qualifications.** Except as otherwise provided in the following paragraphs 7.2 and 7.3, no person shall be eligible to serve as a member of the Board of Directors of the Association unless he is a member of the Association.

**7.2 Additional Qualifications.** Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner, officer or trustee, as the case may be, of a partnership, corporate, trust or other entity Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

**7.3 Initial Board of Directors.** The initial Board of Directors of the Association shall be composed of the persons designated or to be designated in the Articles of Incorporation of the Association (the "Initial Board"), all of whom have been or shall be appointed by Developer. Notwithstanding anything to the contrary contained in this Declaration or in the Articles of Incorporation or By Laws of the Association, the Initial Board shall hold office until the Applicable Date and until their successors have been duly elected and qualified. In the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member appointed by Developer to fill a vacancy, shall be deemed a member of the Association solely for purposes of qualifying to act as a member of the Board of Directors of the Association, and for no other purpose (unless he is actually an Owner of a Lot and therefore a member of the Association).

**ARTICLE VIII**

**PARC ESTATES ARCHITECTURAL CONTROL COMMITTEE**

**8.1 Creation.** There shall be, and hereby is, created and established Parc Estates Architectural Control Committee to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members appointed, from time to time, by the Developer and who shall be subject to removal by the Developer at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association.

**8.2 Purposes and Powers of Committee.** The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

## DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS

### Page 11

- (i) In General. No residence, building, structure, antenna, fence, wall, barbecue, patio, swimming pool or improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any residence or accessory building located on a Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or 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 Committee may require. All plans and drawings submitted to the Committee shall be drawn to a scale of 1" equals 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.
- (ii) Power of Disapproval. The Committee may refuse to grant permission to repaint, construct, place or make the requested improvement, when:
- (a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any Plat of all or any part of the Real Estate;
  - (b) The design, the finished elevation or the color scheme of a proposed improvement (or the repainting thereof) is not in harmony with the general surroundings of the Lot (including, without limitation, topography) or with adjacent buildings or structures; or
  - (c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.
- (iii) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any Plat of all or any part of the Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

**8.3 Duties of Committee.** The Committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

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

## DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS

Page 12

**8.5 Inspection.** The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VIII.

**8.6 Nonapplication to Developer.** Notwithstanding the provisions of this Article VIII or any other provisions of this Declaration requiring the approval of the Committee, the Developer, or any entity related to Developer, shall not be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by the Developer, or any entity related to Developer, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

### ARTICLE IX

#### ASSESSMENTS

**9.1 Creation of Lien and Personal Obligation.** Developer, for each Lot now or hereafter owned by it, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). All such assessments be established, shall commence upon such dates and shall be collected as hereinafter provided. Such assessments, together with interest, costs of collection and reasonable 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 reasonable 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 shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

**9.2 Purpose of Regular or Special Assessments.** Regular or Special Assessments levied by the Association used exclusively (i) to promote the health, safety and the residents occupying the Real Estate, (ii) for the improvement, maintenance, repair and replacement of the Common Areas, the improvements, trees, foliage and landscaping within and upon the Landscape Easements and the drainage system located within and upon the Drainage Easements, (iii) for the performance of the responsibilities and duties of the Association and (iv) for such other purposes as are specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

**9.3 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 Lot at any amount not in excess of the maximum Regular Assessment hereinafter provided:

## DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS

Page 13

**9.4 Special Assessments.** The Board of Directors of the Association may make Special Assessments against each Lot 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 operating deficits which the Association may from time to time incur only with the assent of a majority of the members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

**9.5 Uniform Rate of Assessment.** The Regular Assessments and Special Assessments levied by the Association shall be uniform for all lot categories..

**9.6 Date of Commencement of Regular Assessments; Due Dates.** The Regular Assessment shall commence for each Lot on the first day of the first calendar month following the conveyance of such Lot by Developer to a Nonaffiliated Owner. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments or Special Assessments shall be owed or payable by Developer, or any entity related to Developer, with respect to any Lot or shall become a lien on any Lot while such Lot is owned by Developer, or any entity related to Developer. The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of the annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

### 9.7 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon, by nonuse of the Common Areas or abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and 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. Upon the failure of an Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors of the Association shall be entitled to the appointment of a receiver for the purpose of preserving the 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 may, at its option, bring a 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 reasonable attorneys' fees) and interest from the date such assessments were due, until paid.

(ii) Notwithstanding anything contained in this paragraph 9.7 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



## DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS

Page 14

respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or 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 therefor. Such unpaid share of any assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

### ARTICLE X

#### INSURANCE

**10.1 Casualty Insurance.** The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, owned by the Association or which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." Such insurance policy shall name the Association as the insured. -Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for repair or replacement of the property for which the insurance was carried.

**10.2 Liability Insurance.** The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and the Landscape Easement areas and shall insure 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, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

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

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

### ARTICLE XI

#### MAINTENANCE

**11.1 Maintenance of Lots and Improvements.** Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of unsightly weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

Page 14

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**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 15**

maintenance of the exterior of any structures on such Lot. In the event the Owner of any Lot fails to do so in a manner 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 to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

**11.2 Damage to Common Areas.** In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. 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 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 or any Landscape Easement area or the drainage system located within and upon the Drainage Easements, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or such Easement areas) or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to ' and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

**ARTICLE XII**

**MORTGAGES**

**12.1 Notice to Association.** Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such 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 such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgagee and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

**12.2 Notice to Mortgagees.** The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 16**

**ARTICLE XIII**

**AMENDMENT**

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

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting 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 the votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the By Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two thirds (2/3) in the aggregate of the votes of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer, or any entity related to Developer, owns any Lots within and upon the Real Estate. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 12.1.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 12.1

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

**13.2 By Developer.** Developer hereby reserves the right so long as Developer, or any entity related to Developer, owns any Lot within and upon the Real Estate to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer, without the approval of any other person or entity, in order to bring Developer into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency to induce any of such

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 17**

agencies to make, purchase, sell, insure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; Provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

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

**ARTICLE XIV**

**GENERAL PROVISIONS**

**14.1 Right of Enforcement.** Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in any Plat of all or any part of the Real Estate 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 incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions. .

**14.2 Government Enforcement.** The Metropolitan Development Commission of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority to enforce any covenants, commitments, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance of Marion County, Indiana, 58-AO-3, as amended, or any conditions attached to approval of any Plat of all or any part of the Real Estate by the Plat Committee.

**14.3 Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party 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 any Plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

**14.4 Duration.** These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until January 1, 2008, and thereafter shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then Owners of Lots within and upon the Real Estate, it is agreed that this Declaration shall terminate in its entirety; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

Page 18

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

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

**14.7 Applicable Law.** This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

**14.8 Annexation.** Additional land may be annexed by Developer to the Real Estate (and from and after such annexation she 1 be deemed a part thereof for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration by Developer, and such action shall require no approvals or action of the Owners.

**14.9 Sales Offices and Models.** Notwithstanding anything to the contrary contained in this Declaration or any Plat of all or 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 shall, during the Development Period, be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

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

PARC ESTATES ASSOCIATES, an

Indiana limited partnership

By: \_\_\_\_\_ - Parc Estates, Inc., an Indiana corporation, its general partner

By:  
STATE OF INDIANA  
SS:  
COUNTY OF MARION

Before me, a Notary Public in and for the State of Indiana, personally appeared \_\_\_\_\_,  
the \_\_\_\_\_ - Parc Estates, Inc., an Indiana corporation, the general partner of  
PARC ESTATES ASSOCIATES, an Indiana limited partnership, who acknowledged the execution of the  
foregoing Declaration of Covenants, conditions and Restrictions of Parc Estates for and on behalf of said  
corporation as the general partner of PARC ESTATES ASSOCIATES.

WITNESS my hand and Notarial Seal this day of \_\_\_\_\_, 19\_\_  
My Commission Expires:  
This instrument was prepared by:

IN WITNESS WHEREOF, Parc Estates Homeowners' Association, Inc. has executed this Third Amendment as of the date first written above.

PARC ESTATES HOMEOWNERS' ASSOCIATION, INC.

By: Charles Skarvan  
Charles Skarvan, President

Attest:

Martha Hunt  
Martha Hunt, Secretary

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Charles Skarvan, President of Parc Estates Homeowners' Association, Inc. and Martha Hunt, Secretary of Parc Estates Homeowners' Association, Inc. who acknowledged the execution of the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions of Parc Estates.

WITNESS my hand and notarial seal this 20 day of September, 1998.

My Commission Expires:

April 22, 1999

Mary J. Skarvan  
Notary Public

MARY J. SKARVAN  
Printed

Residing in HEMLOCK  
County, Indiana

This instrument prepared by Parc Estates Homeowners' Association, Inc. c/o Harmony Management 3643 Mission Drive, Indianapolis, Indiana 46224.

PS

BY-LAWS  
OF  
PARC ESTATES HOMEOWNERS ASSOCIATION, INC.  
ARTICLE I  
NAME AND PRINCIPLE OFFICE

Section 1. The name of the corporation is Parc Estates Homeowners Association, Inc. (hereinafter referred to as the "Association").

Section 2. The registered office of the Association shall be located at 1844 Ambassador Court, Indianapolis, IN 46214, until and unless changed in accordance with law by the Board of Directors.

ARTICLE II  
DEFINITIONS

Section 1. "Developer" shall mean Parc Estates Associates, an Indiana limited partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Declaration, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate (as such term is defined in the Declaration) pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

Section 2. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Parc Estates, dated November 24, 1998, and recorded November 24, 1998, as Instrument No. 1998-02089937, in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth at length herein.

Section 3. "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Declaration and the "Corporation" in the Articles of Incorporation of this corporation.

Section 4. All of the terms as defined and used in the Declaration shall have the same meanings in these By-Laws and reference is specifically made to Article II of the Declaration containing definitions of terms.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section I. Membership. Voting Rights.

Reference is hereby made to Article VI of the Declaration which sets forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights of members in good standing, all of which terms, provisions and conditions are incorporated herein by reference.

Section 2. Quorum. The presence in person or by proxy at any meeting of the members of the Association of persons entitled to vote Ten percent (10%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in or required by the Articles of Incorporation of the Association, the Declaration, these By-Laws, or statute. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.



BY-LAWS

Page 2

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the members of the Association. Cumulative voting shall not be permitted.

Section 4. Majority Required. A majority of the votes of members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the By-Laws or by statute.

Section 5. Meetings. Meetings of the members of the Association shall be in accordance with the following provisions:

A. *Place.* Meetings of the members shall be held at such place in Marion County, Indiana, as may be designated by the Board of Directors of the Association.

B. *Annual Meetings.* The first annual meeting of the members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided by the Board of Directors. At such first annual meeting of the members, the members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

C. *Special Meetings.* Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

D. *Notice of Meetings.* It shall be the duty of the secretary of the Association to serve a notice of each annual or special meeting, stating the purposes thereof, as well as the time and place where it is to be held, upon each member of record, at least thirty (30) days prior to such meeting. The mailing of a notice to each member at the address shown for such member on the Association's records shall be deemed notice served.

E. *Order of Business.* The order of business at all of the meetings shall, to the extent applicable, be as follows:

- (1) Roll Call
- (2) Proof of notice of meeting or waiver of notice
- (3) Reading of minutes of preceding meeting
- (4) Reports of officers
- (5) Reports of committees
- (6) Election of directors
- (7) Unfinished business
- (8) New business

ARTICLE IV  
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members of the Association. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among members of the Association, or persons deemed to be member eligible to serve as a director thereof or otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot at the annual meeting of the members of the Association. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE V  
BOARD OF DIRECTORS

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of five (5) persons. Except for the initial Board of Directors, directors must be members of the Association or persons deemed to be members of the Association or otherwise eligible to serve on the Board of Directors of the Association in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Initial Board of Directors. The initial Board of Directors named in the Articles of Incorporation (the "Initial Board") shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date and until their successors have been duly elected and qualified. In the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by the Developer, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member appointed by the president to fill a vacancy, shall be deemed a member of the Association solely for purposes of qualifying to act as a member of the Board of Directors of the Association, and for no other purpose (unless he is actually an Owner of a Lot and therefore a member of the Association).

Section 3. Term of Office Generally. At the special meeting of the members held within sixty (60) days after the Applicable Date, the members shall elect a full slate of directors to serve until the first annual meeting of the members after the Applicable Date and until their successors have been duly elected and qualified. At such first annual meeting of the members after the Applicable Date, the members shall elect one-third (1/3) of the total number of directors to be elected to a term of one (1) year, one-third (1/3) of such total to a term of two (2) years, and one-third (1/3) of such total to a term of three (3) years; and at each annual meeting thereafter the members shall elect directors for a term of three (3) years to fill the vacancies created by expiring terms. A director may serve any number of consecutive terms.

BY-LAWS

Page 4

Section 4. Powers. The Board of Directors shall have such powers as are reasonable and necessary for the administration of the affairs of the Association and to accomplish the performance of their duties, which powers include, but are not limited to, the power:

- A. to adopt and publish reasonable rules and regulations governing the use and enjoyment of the Common Areas and the management and administration of the Association, and to establish penalties for the infraction thereof;
- B. to suspend the voting rights and right to use any Association facilities of a member, but not rights of access and easements necessary for the use of his Lot, during any period in which such member shall be in default for a period of thirty (30) days in the payment of any assessment levied by the Association, or the payment of any other amount or the performance of any other term of the Declaration or these By-Laws. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- C. to exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or statute;
- D. to declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- E. to employ a manager, an independent contractor, or such other employees as it deems necessary, and to prescribe their duties, subject to the limitations set forth in the Declaration; and,
- F. to do and take all such action as is or may be necessary, desirable or appropriate to perform the duties, obligations and responsibilities of the Board of Directors as required by the Declaration, other provisions of these By-Laws, the Articles of Incorporation, or statute.

Section 5. Duties. The Board of Directors shall have the following duties:

- A. to cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding Twenty-five percent (25%) of the total votes of the membership entitled to vote;
- B. to establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- C. to fix the amount of any special assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- D. to send written notice of each assessment to each Owner in accordance with the Declaration;
- E. to foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;

- F. to issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;
- G. to procure and maintain the insurance coverage required by the Declaration and such other insurance coverage as the Board of Directors, in its sole discretion, deems necessary or advisable;
- H. to cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as required by the Declaration; and,
  - I. to cause all of the Common Areas, Landscape Easements and Drainage Easements to be maintained to the extent of the Association's responsibilities therefor as provided in the Declaration.

Section 6. Vacancies. Subject to the provisions of the Declaration and the foregoing Section 2 of this Article V with respect to the Initial Board of Directors, any vacancy in the Board of Directors shall be filled by vote of the majority of remaining directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No director shall receive compensation for any serve he may render to the Association as such director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, and any director may be paid and compensated for services to the Association in a capacity other than as a director.

Section 8. Removal of Directors. Subject to the provisions of the Declaration and the foregoing Section 2 of this Article V with respect to the Initial Board of Directors, any director may be removed with or without cause by a majority of the directors and a successor may then and there be elected to fill the vacancy thus created at any regular or special meeting of the Association duly called.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the president on three (3) days notice to each director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the president or secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

BY-LAWS

Page 6

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles of Incorporation, these By-Laws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI  
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a president, a vice president, a secretary and a treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year and until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise be disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer or vice president and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

- A. President. The president shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The president shall have and discharge all the general powers and duties usually vested in the

BY-LAWS

Page 7

office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

B. Vice President. The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors or as are delegated to him by the president.

C. Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

D. Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE VII  
COMMITTEES

The Board of Directors shall appoint the Parc Estates Architectural Control Committee provided for in the Declaration and the Nominating Committee referred to in Article IV of these By-Laws. In addition, the Board of Directors or the president may appoint various other committees to carry out the purposes of the Association. Except as otherwise expressly provided in Article IV of these By-Laws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

ARTICLE VIII  
BOOKS OF ACCOUNT AND FISCAL YEAR

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipts of administration which shall specify the maintenance and repair expenses of the Common Areas and the Landscape Easement and Drainage Easement areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Lot, including any Owner, any lender and any holder, insurer or guarantor of a first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances and shall be audited annually by qualified auditors. The cost of such audits shall be a Common Expense. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive an audited financial statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, and the By-Laws of the Association, and other rules concerning the Real Estate, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

Section 2 Fiscal Year. The fiscal year of the Association shall commence January 1 and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

ARTICLE IX  
CONTRACTS, LOANS, CHECKS

Section 1 Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws, no officer, agent, or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2 Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the president, secretary, treasurer, or such other person as the Board of Directors may from time to time designate by resolution.

ARTICLE X  
ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association Regular and Special Assessments, which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessments which are not paid when due shall be delinquent. No Owner may waive or otherwise escape liability for the assessments provided for in the Declaration or herein by nonuse of the Common Areas or abandonment of his Lot.

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 lot (including Common Area Lots) at any amount not in excess of the maximum Regular Assessment hereinafter provided.

Until January 1, 1995, the maximum Regular Assessment on any lot shall not exceed TEN DOLLARS (\$10.00) per month; and after January 1, 1995, the maximum Regular Assessment on a lot may not be increased by more than fifteen percent (15%) above the annual Regular Assessment for the previous calendar year without approval of two-thirds (2/3) of those members of the Association who cast votes in person or in proxy at a meeting of the members of the Association duly called for such purpose.

Special Assessments. In addition to Regular Assessments, the Association may make Special Assessments against each lot (including Common Area Lots) for the purpose of reconstructing, repairing or replacing any capital improvement which the Association is required to maintain. In addition, the Association may make Special Assessments to recover any operating deficits which the Association may from time to time incur.

Common Area Maintenance Assessments. In addition to Regular Assessments and Special 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 Common Area Maintenance Assessment against each Common Area Lot at any amount not in excess of the maximum Common Area Maintenance Assessment hereinafter provided.

BY-LAWS

Page 9

Until January 1, 1995, the maximum Common Area Maintenance Assessment on any Common Area Lot shall not exceed TEN DOLLARS (\$10.00) per month and from after January 1, 1995, the maximum Common Area Maintenance Assessment on a Common Area Lot may not be increased by more than fifteen percent (15%) above the annual Common Area Maintenance Assessment for the previous calendar year without the approval of two-thirds (2/3) of the Common Area Lot Owners who are eligible that cast votes in person or in proxy at a meeting duly called for such purpose.

ARTICLE XI  
AMENDMENTS

Section 1. The power to amend, alter, add to and repeal these By-Laws is vested in the Board of Directors of the Association; provided, however, that no amendment or other change shall be made in these By-Laws which conflicts with the terms and provisions of the Declaration unless the same is adopted by and approved by the members of the Association and others entitled by the terms of the Declaration to vote on amendments to the Declaration as provided in, and in accordance with the requirements of, the Declaration; provided further, there shall be no amendment of or other change to these By-Laws prior to the Applicable Date without the consent and approval of Developer.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

*Revised: 12/8/99*