

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PEBBLEBROOK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION (hereinafter called "the Declaration" or "this Declaration") made this 22 day of September, 1985, by PEBBLE BROOK DEVELOPMENT CO., an Indiana general partnership (hereinafter called "Declarant"),

WITNESSETH:

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

WHEREAS, Declarant has heretofore conveyed to various other parties the real estate in Hamilton County, Indiana, more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Conveyed Lots"); and

WHEREAS, Declarant is also the owner of the Real Estate in Hamilton County, State of Indiana, more particularly described as Tract I in Exhibit "C" attached hereto and incorporated herein by reference, and may hereafter become the owner of the real estate more particularly described as Tract II in said Exhibit "C" (hereinafter referred to, collectively, as the "Additional Real Estate"); and

WHEREAS, Declarant is in the process of creating on the Original Real Estate [and may in the future desire to create on such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided] a residential community with public streets, and private open spaces and landscaped areas, for the benefit of such residential community, to be known as PEBBLEBROOK FAIRWAY HOMES; and

WHEREAS, Declarant desires to reserve and grant to the owners of each of the Conveyed Lots the right for a limited period of time subject the Conveyed Lots owned by each such owner to the terms of this Declaration and thereby include such Conveyed Lots as part of such residential community, as hereinafter provided; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common

This Instrument Recorded 10-2-1985 Mary L. Clark, Recorder, Hamilton County, Ind.

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facilities (if any) therein contained, and to this end, Declarant desires to subject the Original Real Estate [together with such portions (or all) of the Additional Real Estate as may hereafter be made subject to the terms of this Declaration, as hereinafter provided], and to permit the owners of each of the Conveyed Lots a limited right to subject the Conveyed Lots, to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Original Real Estate [and any portions (or all) of the Additional Real Estate and the Conveyed Lots as may be hereafter made subject to the terms of this Declaration, as hereinafter provided] and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering the common facilities (if any) located on the Property (hereinafter defined), administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance, repairs and replacements of buildings as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Pebblebrook Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, and which shall run

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with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

ARTICLE I.

DEFINITIONS

Section 1. The following words when used in this Declaration or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

A. "Additional Real Estate" shall mean the parcel or parcels of real estate in Hamilton County, Indiana, described in Exhibit "C" attached to and incorporated in this Declaration.

B. "Applicable Date" shall mean the "Applicable Date" as defined and determined in accordance with Section 3.B. of Article III hereof.

C. "Association" shall mean Pebblebrook Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.

D. "Board" or "Board of Directors" shall mean the board of directors of the Association.

E. "Common Area" shall mean (i) those portions, if any, of the Property shown upon any recorded subdivision plat of the Property, or any part thereof (including the Initial Plat), which are not Lots [reserving, however, unto Declarant the right to re-plat any of such areas as part of one (1) or more Lots], other than portions thereof (such as streets) which are dedicated to the public, whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, and (ii) such portions of the Property (if any) as are hereafter declared to be "Common Area" by an instrument executed and recorded by Declarant, whether or not such areas comprise part or all of a lot or lots shown upon any recorded subdivision plat of the Property.

F. "Conveyed Lots" shall mean the parcels of real estate in Hamilton County, Indiana, described in Exhibit "B" attached to and incorporated in this Declaration.

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G. "Declarant" shall mean Pebble Brook Development Co., an Indiana general partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

H. "Initial Plat" shall mean that certain subdivision plat of the Original Real Estate, Tract I of the Additional Real Estate and the Conveyed Lots, recorded in the office of the Recorder of Hamilton County, Indiana on September 4, 1984, in Plat Book II, pages 59 through 61, inclusive.

I. "Limited Common Area", if such term is used herein or in any supplement hereto, shall mean such portions of the Common Area as to which the use thereof is limited or restricted in accordance with the terms hereof, or any supplement hereto, or any subdivision plat of the Property to the Owner or Owners of one or more but less than all of the Lots, and which are clearly designed and intended for use by the Owner or Owners of one or more but less than all of the Lots, and which are appurtenant to one or more but less than all of the Lots and which are not necessary for the beneficial use and enjoyment of all of the Lots.

J. "Living Unit" shall mean a residential housing unit consisting of a group of rooms and hallways which are designed or intended for use as living quarters for one family or housekeeping unit. For the purpose of determining membership in the Association, each Living Unit as initially constructed on a Lot by Declarant or others shall be considered as a separate and individual unit. In addition, Living Unit shall be deemed to include any enclosed garage, enclosed or covered porch, or patio appurtenant to such Living Unit.

K. "Lot" shall mean and refer to any and each plot of land included in the Property (with the exception of Common Area) designed and intended

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for use as a building site for, or developed and improved for use as, a Living Unit; provided, however, that for purposes of this Declaration a "Lot" will not necessarily be the same as any single numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Property or any part thereof (including the Initial Plat), and for purposes hereof a "Lot" may be (i) any such single numbered parcel of land, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land. The determination of what portion of the Property constitutes a "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land which is a part of the Property and which is (or, in the case of Conveyed Lots hereafter subjected to this Declaration, has been) conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Living Unit; provided, however, that until the initial conveyance of each portion of the Property owned by Declarant to another Person, each such single numbered parcel of land shown upon, and identified as a lot on, the Initial Plat (and which has been included in the Property) shall be deemed to constitute two (2) "Lots" hereunder while owned by Declarant. However, notwithstanding the foregoing, where a Living Unit (i) is separated from an adjacent Living Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Living Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between such adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as such boundary line or lines were described in the deed for such Lot from Declarant to another Person; in addition, where any exterior wall of a Living Unit is not a Party Wall but extends outside the boundary lines (lot lines) of the Lot upon which such Living Unit is primarily located (as such boundary line or lines were described in the deed for such Lot from Declarant to another Person), the boundary lines of such Lot shall be deemed extended to the extent necessary to include all of the ground area occupied by such Living

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Unit. It is the intent hereof that, in any and all events, this Declaration and any recorded subdivision plat of the Property or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Living Unit shall be and constitute part of the Lot upon which such Living Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Living Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any recorded subdivision plat of the Property or any part thereof.

L. "Member" shall mean any person or entity holding membership in the Association as provided in Article III hereof.

M. "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.

N. "Mortgagee" shall mean any person or entity named as the Mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage.

O. "Original Real Estate" shall mean the parcel or parcels of real estate in Hamilton County, Indiana, described in Exhibit "A" attached to and incorporated in this Declaration.

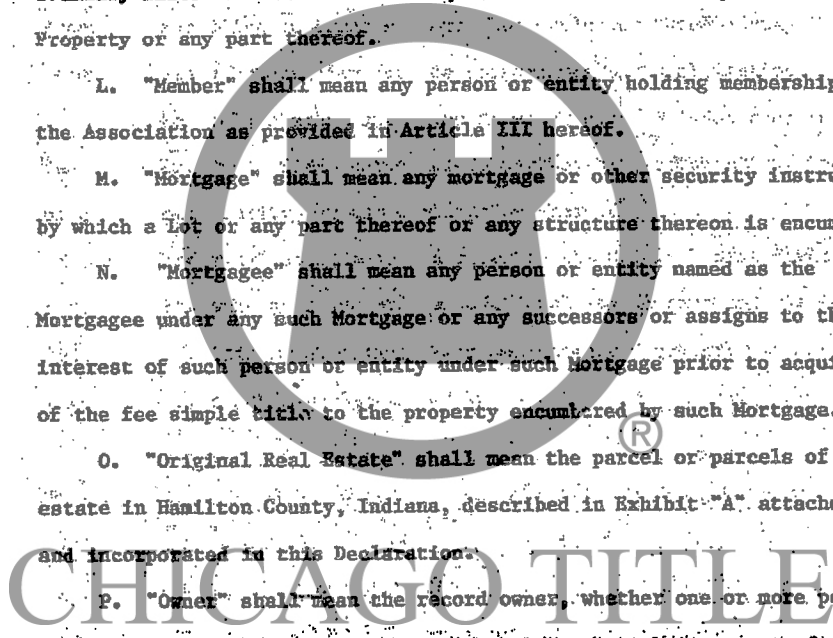
P. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Q. "Person", whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

R. "Property" shall mean and refer to the Original Real Estate together with such portions of the Additional Real Estate and the Conveyed Lots as have, from time to time, been subjected to, and are, at any time, subject to this Declaration.

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

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION;
DECLARANT'S RIGHT TO SUBJECT ADDITIONAL
REAL ESTATE TO THIS DECLARATION;
SUBJECTING CONVEYED LOTS TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. As of the date of execution of this Declaration, the Property consists solely of the Original Real Estate. The Owner of any Lot at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

Section 2. Declarant's Right of Expansion. Declarant shall have, and hereby reserves, the right, at any time, and from time to time, on or before the Applicable Date to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration, when Declarant places of record in Hamilton County, Indiana an instrument so declaring the same to be a part of the Property, which declaration may be made as part of a subdivision plat of any

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to this Declaration, or by the deed conveying any portion of the Additional Real Estate to a Person other than Declarant, or otherwise. Upon the recording of any such instrument on or before the Applicable Date, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add to and expand the Property, as described in this Section 2, as to any part or parts of the Additional Real Estate shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the Applicable Date. Such expansion of the Property is entirely at the discretion of Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Original Real Estate, or any other portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

Section 3. Subjecting of Conveyed Lots. Declarant hereby grants to the owners of each of the Conveyed Lots the right to add the Conveyed Lot owned by such owners to the Property and to thereby subject such owners' Conveyed Lot to this Declaration, but only in the manner, and subject to the terms and provisions hereinafter set forth in this Section 3. Such right may be exercised by the owners of a Conveyed Lot only by complying with the following terms, provisions and conditions:

- A. Such owners of a Conveyed Lot shall execute and deliver to Declarant for recording in the office of the Recorder of Hamilton County, Indiana, not later than December 31, 1985, a supplemental declaration, joinder agreement or other instrument in writing, in form and substance approved on its face by Declarant, by which such owners subject and submit their Conveyed Lot to this Declaration, and by which said owners declare that said Conveyed Lot shall thereafter be deemed a Lot and part of the Property for all purposes of this

Declaration. In addition, if the Conveyed Lot described therein is subject to any lien, mortgage or other encumbrance, the holder thereof must consent in writing to such instrument, which consent shall be delivered to Declarant for recording with such instrument; and

B. Such owners of a Conveyed Lot shall pay to the Association concurrently with the delivery to Declarant of the instrument referred to in the immediately preceding subsection A. (if not theretofore so paid), the amount required by the terms of Section 14 of Article V hereof to be paid to the Association as a contribution to its initial working capital fund and start-up fund, as if such Conveyed Lot was then being conveyed to the owners thereof by Declarant as an initial sale of a Lot.

Upon compliance by the owners of a Conveyed Lot with the requirements of the foregoing subsections A and B, Declarant shall forthwith cause the instruments referred to in subsection A (including the consent of the holder of any lien, mortgage or other encumbrance, if applicable) to be recorded in the office of the Recorder of Hamilton County, Indiana. Upon such recording, the Conveyed Lot described in such instrument shall thereupon and thereby automatically be deemed a Lot and a part of the Property, and subject in all respects to this Declaration, and the owner of such Conveyed Lot shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. The foregoing procedures for submission of and subjecting the Conveyed Lots to this Declaration shall be applicable to each of the Conveyed Lots separately so that one (1) or more but less than all of the Conveyed Lots may be added to the Property and subjected to this Declaration without any necessity that all of the Conveyed Lots be so added to the Property and subjected to this Declaration.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than

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one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two (2) classes of voting membership, as follows:

A. Class A. Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person

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entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

B. Class B. Class B members shall be the Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each Lot owned by it and ten (10) votes for each single numbered parcel of land shown upon, and identified as a lot on, any recorded plat of the Original Real Estate or the Additional Real Estate (whether heretofore or hereafter recorded, including the Initial Plat), any part of which lot has not been conveyed by Declarant to another Person. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after seventy-five percent (75%) of the Lots in the Property have been conveyed to Owners other than Declarant; provided, however, that for the purpose of making any determination under this subsection (b) it shall be assumed that there are 94 Lots in the Property whether or not there are in fact such number of Lots in the Property at any time; (c) three (3) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; provided, however, that in the event any portion of the Additional Real Estate is added to the Property by Declarant pursuant to its right and option to expand the Property as hereinabove reserved, then the time period provided in this subsection (c) shall be five (5) years after the date of recording of such first conveyance, rather than three (3) years; or (d) seven (7) years from the date of this Declaration (the applicable date being herein referred to as the "Applicable Date").

Declarant shall be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of Class B membership.

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and two (2) Class A memberships for each single numbered parcel of land shown upon, and identified as a lot on, any recorded plat of the Original Real Estate or the Additional Real Estate (whether heretofore or hereafter recorded, including the Initial Plat), any part of which lot is owned by Declarant on or after the termination of Class B membership.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE IV.

PROPERTY RIGHTS

Section 1. General Provisions.

A. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the owner and mortgagee, if any, from time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.

B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2006, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Except as hereinafter provided, this Declaration may be amended during the initial term provided above by an instrument signed by not less than ninety percent (90%) of the Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Certain amendments also require additional approval as specified in Article XI hereof.

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Section 2. Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area (except for such portions thereof, if any, as are Limited Common Area), limited, however, to and for the uses and purposes for which any portion of the Common Area is designed and intended, which right and easement shall include, but not be limited to, use and enjoyment of open spaces and all other parts of the Common Area (other than Limited Common Areas, if any). Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same;

B. The right of the Association to suspend the voting rights and right to the use of recreational facilities, if any, situated upon the Common Area (but not rights of access to Lots) by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

C. The right of the Association to levy assessments as provided in this Declaration; and

D. The rights of the Association and Declarant reserved under Sections 4 and 5 of this Article IV or elsewhere in this Declaration.

Section 3. Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area to residents of his Lot, including the members of his family, his tenants, or contract purchasers.

Section 4. Association's Rights.

A. The Association shall have the right to manage, repair, maintain, improve and operate the Common Area (including by way of example, but not limited to, landscaping thereof).

B. The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 4.A. next hereinabove, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgage shall have received the prior written approval specified in Article XI hereinbelow.

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C. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required by Article XI hereinbelow.

D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may at any time be granted by Declarant or the Association (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area.

E. Anything herein apparently to the contrary notwithstanding, except as otherwise expressly herein provided for, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified in Article XI hereinbelow.

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last single numbered parcel of land shown upon, and identified as a lot on, any recorded plat of the Original Real Estate or the Additional Real Estate (whether heretofore or hereafter recorded, including the initial plat) is conveyed to an Owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Original Real Estate or the Additional Real Estate) and the right to maintain and use facilities (including, but not limited to, model living units) and signs upon the Common Area and any other portions of the Property (other than Lots owned by an Owner other than Declarant) for the purpose of marketing units, and to invite and escort the public thereon for such purpose.

Section 6. Non-Dedication to Public Uses. Nothing contained in this

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construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Areas being reserved to the Owners and the Association as provided in this Declaration, but subject, however, to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 7. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any Living Unit or any structure containing one or more Living Units or any improvements to any Living Unit encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Living Unit shall exist for the continuance of any such encroachment on the Common Area.

Section 8. Parking Rights. Each Lot contains or will contain parking areas (including garages) for the use of its Owner.

Section 9. Title to Common Area. Declarant hereby covenants that it shall convey and transfer the Common Area included in and constituting a part of the Original Real Estate (if any) to the Association prior to the first conveyance of a Lot within the Original Real Estate to an Owner other than Declarant. If, as and when portions of the Additional Real Estate are subjected to this Declaration and added to the Property, Declarant covenants that it shall convey and transfer to the Association the Common Area (if any) included in and constituting a part of each such portion so added to the Property prior to the first conveyance by Declarant to an Owner other than Declarant of any Lot located within such portions so added to the Property. Each such portion of the Common Area so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to any dedicated or public street or road rights-of-way affecting the same and all easements, covenants, conditions, limitations and restrictions then of record, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association.

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ARTICLE V.

ASSESSMENTS

Section 1. Personal Obligations. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each Owner of a Lot by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of hazard and liability insurance for Common Areas and any other common property; hazard insurance for Living Units; exterior maintenance of Living Units and Lots; snow removal, trash removal, sewer charges; and water charges (if payable by the Association); street lighting (if provided by the Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in advance in twelve equal monthly installments on the first day of each and every month or, if so determined by the Association, in such other periodic installments as may be specified by the Association. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the

date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Living Unit.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property, to construct, manage, improve, maintain, repair and administer the Common Area, for the exterior maintenance of Living Units and Lots, and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and any other property that must be replaced on a periodic basis and those portions of the exterior of Living Units and Lots which the Association is required to maintain and which must be replaced on a periodic basis. [®] Such reserve fund shall be maintained out of the regular annual assessments.

Section 3. Annual Assessments. Until December 31, 1986, the maximum annual assessment shall be at the monthly rate of (I) Sixty Dollars (\$60.00) per Lot for each Lot upon which a Living Unit containing not more than 1,600 square feet of living area has been constructed ("Class I Lot"), and (II) Seventy Dollars (\$70.00) per Lot for each Lot upon which a Living Unit containing more than 1,600 square feet of living area has been constructed ("Class II Lot"). Any Lot conveyed by Declarant to another person without a Living Unit having been constructed thereon shall be deemed a Class I Lot until a proper Living Unit has been constructed thereon, at which time a final determination shall be made as to whether such Lot constitutes a Class I Lot or a Class II Lot.

- A. From and after December 31, 1986, the maximum annual assessments may be increased each year not more than 10% above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of the membership.
- B. From and after December 31, 1986, the maximum annual assessments may be increased more than 10% above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of each class of Members (without regard to whether such Members own Class I Lots or Class II Lots) who are voting in person or by proxy, at a meeting called for this purpose.
- C. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, (A) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and (B) the cost of any unanticipated or extraordinary exterior maintenance of Living Units and Lots, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members (without regard to whether such Members own Class I Lots or Class II Lots) who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots within the same Class of Lots, but annual assessments for Class I Lots may be different than annual assessments for Class II Lots. Assessments (both annual and special) for Class II Lots shall be in an amount which does not exceed one hundred-twenty percent (120%) of the corresponding assessments for Class I Lots. Annual assessments shall be collected on a monthly basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines. The provisions of this Section 6 are subject to the provisions of Section 13 of this Article V as to all Lots owned by Declarant.

Section 7. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to all Lots subjected to this Declaration on the first day of the month following the month of recording of the instrument by which such Lots became a part of the Property. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

Section 8. Commencement of Annual Assessments. By November 1 of each year the Board shall fix the amount of annual assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 9. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 10. Nonpayment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of twelve percent (12%) per annum and shall become a continuing lien in favor of the Association on the Lot against which assessed and the

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improvements thereon and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 11. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and is or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hamilton County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

Section 12. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First

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Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments the lien for which is extinguished by reason of this provision may be reallocated and assessed to all Lots as a common expense.

Section 13. Limitations on Assessments Owed by Declarant. Notwithstanding anything to the contrary contained herein, Declarant shall be obligated to pay, as to any and all Lots owned by it from time to time, only twenty-five percent (25%) of the assessments (whether regular annual assessments or special assessments) payable hereunder by Owners (other than Declarant) of Lot, and all such Lots owned by Declarant shall be subject to a lien hereunder only for amounts determined under this Section 13. ®

Section 14. Initial Working Capital and Start-Up Fund. At the closing of the initial sale of each Lot by Declarant to an Owner other than Declarant, whether or not the Lot is then improved with a living unit, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed to the Association, an amount equal to two (2) times the amount of the then-current monthly rate for the annual assessment applicable to the Lot so purchased, which amount shall be held and used by the Association as a working capital fund and start-up fund for the initial months of operation of the Property and the Association, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. However, such payment shall not be considered as an advance payment of any regular annual assessments. On or before sixty (60) days after the date of recording of the instrument by which any Lots became a part of the Property and thereby subject to this

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Declaration, Declarant shall pay to the Association the required contribution to the Association's working capital fund and start-up fund for all of such lots then owned by it which remain unsold, which amount Declarant shall then be entitled to recover directly from subsequent purchasers of such unsold lots, who shall pay the same to Declarant for Declarant's own account in lieu of making payment thereof to the Association.

ARTICLE VI.

ARCHITECTURAL CONTROLS

Section 1. Architectural Control Committee Authority. No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Property, additional fences, or changes in existing fences, hedges, walls, walkways and other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the Living Units and other buildings and improvements on the Property, until the written plans and specifications showing in reasonable detail the nature, kind, shape, height, materials (including color), location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Property by an Architectural Committee composed of the Board of Directors of the Association or three (3) or more representatives appointed by the Board of Directors. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said written plans and specifications have been submitted to it, or if no suit to enjoin the making of such additions, alterations or changes or to force the cessation thereof has been commenced within sixty (60) days of such submission, such approval will be deemed to have been given. If no such submission has been made to the Architectural Committee, suit to enjoin or force the removal of such additions, alterations or changes may be instituted at any time by the Association or any Owner. During the time which the Association has a Class B member, the decisions of the Architectural Committee must have the written approval of the Declarant. The approvals of the Architectural Committee required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required

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to be obtained from any other persons or governmental agencies pursuant to the terms of the Initial Plat, or any other plat or otherwise.

Section 2. Restoration in Accordance with Original Plans. Any restoration or repair of the Common Area or exterior of Living Units, after a partial condemnation or damage due to fire or other casualty, shall be performed substantially in accordance with this Declaration and the original plans and specifications for the same, unless other action is approved by eligible holders holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible holders of First Mortgages.

ARTICLE VII.

OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Area and Exteriors. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area and all improvements (if any) thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots) shall include, but not be limited to, the following: the maintenance and repair of the Common Area improvements, if any, and all other improvements or material located within or used in connection with the Common Area. In order to preserve the uniform and high standard of the Property, the Association shall also be responsible for the maintenance and repair of the exterior of all Living Units and any other buildings and improvements located on Lots, and the Lots themselves, which responsibility shall include, but not be limited to, the following: the maintenance and repair of exterior surfaces of all buildings on the Property, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, downspouts and overhangs, the maintenance and repair of exterior windows and doors, and necessary painting, staining and repair of patio structures as originally built on a Lot (but not of additions thereto

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made by an Owner). The Association shall mow, trim, water and otherwise care for and maintain all grass, trees, shrubbery, plants and other landscaping located on Lots, excluding, however, any landscaping located on Limited Common Area which has been installed by the Owner thereof, and such Owner shall be responsible for the maintenance and care of such landscaping on his own Limited Common Area at his sole cost and expense. All maintenance and repair of the individual Living Units and any other buildings shall be the sole obligation of and shall be performed at the sole cost and expense of the individual Owner thereof, except to the extent the exterior maintenance and repair is provided by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

Section 2. Lawn and Planting Maintenance. To the extent the Association undertakes to water gardens and plantings established by individual Owners, it will not be responsible for any damage to such gardens and plantings due to overwatering, underwatering or improper watering. In lieu of maintaining separate water lines for the purpose of watering the Common Area and any landscaping on the Lots, the Association may draw water for such purposes from exterior sillcocks on each Living Unit or Lot, provided that it rotates such drawing among Living Units or Lots in reasonable proximity to the area required to be watered by a schedule or other reasonable means so as to approximately equalize the amount of water taken from each such Living Unit or Lot over the course of a season.

Section 3. Services. The Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary

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or desirable in connection with the operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or an entity owned or controlled by the same persons as Declarant, must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

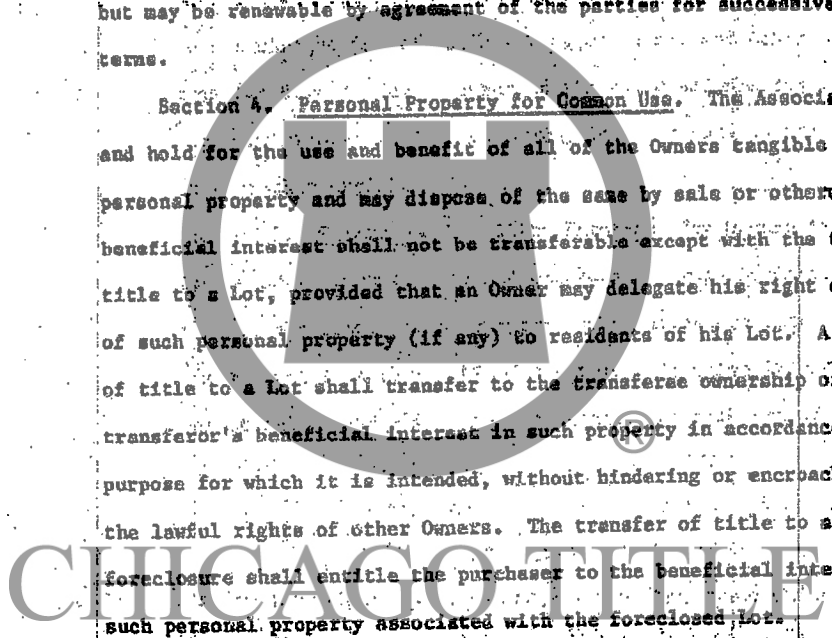
Section 4. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property (if any) to residents of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed lot.

Section 5. Utilities. The Association shall pay as a common expense all charges for electricity, water, sewer and other utilities used upon the Common Area, subject to the Association's right to draw water from exterior sillcocks on Living Units or Lots as provided in Section 2 of this Article VII.

Section 6. Hazard and Liability Insurance for Common Property. The Association shall procure fire and extended coverage insurance on insurable Common Areas and other common property on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement only); and shall use the proceeds of such hazard insurance solely

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For the repair, replacement or reconstruction of such insurable Common Areas and other common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages ("First Mortgagees") on Living Units, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Living Units establishing entitlement to such reimbursement.

ARTICLE VIII.

OWNERS' MAINTENANCE

Section 1. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Living Unit, patio and all other areas, features or parts of his Lot and Limited Common Areas appurtenant thereto to the extent not otherwise maintained by the Association. An Owner shall do no act nor any work that will impair the structural soundness or integrity of any structure, or an adjoining Living Unit, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units, or their Owners.

Section 2. Heating of Living Units. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Living Unit which might result in damage to that or other Living Units, all Owners, shall maintain the temperature in their Living Units, at all times, at least at 55 degrees Fahrenheit, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control. Any damage resulting from the refusal or failure of an Owner to so maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's reasonable control) the cost thereof shall be assessed against the Lot of the refusing or failing Owner. However, if the failure to maintain such minimum temperature is due to causes beyond the Owner's reasonable control the cost of such repair shall be a common expense.

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PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Living Unit upon the Property and which connects two (2) or more Living Units or forms part of walls in two (2) or more Living Units shall constitute a party wall (any such wall being herein referred to as a "Party Wall") and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of such Party Wall, proportionately.

Section 3. Destruction by Fire or Other Casualty. If any Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such Party Wall or by the Association, and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that any damage to a Party Wall is not covered and paid for by the insurance provided for herein, an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to such Owner's Lot and shall pass to such Owner's successors in title to such Lot.

Section 6. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose

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one arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.)

ARTICLE X.

GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS APPLICABLE TO PROPERTY

Section 1. Living Unit and Lot Restrictions. No more than one Living Unit shall be erected or maintained on each Lot. No Living Unit shall be used for purposes other than as a single family residence, nor shall any trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model Living Units and business and sales offices by Declarant during the construction and sale periods.
- B. The maintenance of offices by the Association or its designated manager for purposes of management of the Property.
- C. Lease, rental or use of a Living Unit for purposes consistent with this Section.
- D. The use of a Living Unit by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 2. Common Area Restrictions. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area, nor shall any "for sale" or "for rent" signs or any window display advertising be maintained or permitted on any part thereof, except that Declarant reserves the right for itself or its agents to maintain model Living Units, business and sales offices, storage areas and construction offices on the Common Area during the construction and sales period until the last Lot existing as part of the Property on the Applicable Date is conveyed to an Owner other than Declarant, and to place "for sale", "for rent" or any other signs on any part of the Common Area and

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Area, or on a Lot or Limited Common Area so as to be visible from outside the Lot or Limited Common Area. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly materials.

Section 7. Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot or on the Common Area or any part thereof, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of 25% of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

Section 8. Prohibited Structures. No structure of a temporary character, trailer, boat, camper-bus, basketball hoops, tent, or shack shall be maintained on any Lot outside of a garage or other approved structure, nor shall any garage or other building except a permanent residence be used on any Lot at any time as a residence or sleeping quarters, either temporarily or permanently.

Section 9. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot upon which the same are located. The design of such screened enclosure must be approved by the Association in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, trucks, motorcycles, mini-bikes,

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mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles (including station wagons and small trucks such as pickups and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Area, either permanently or temporarily.

Section 10. Signs. No signs of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot or Common Area, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require, and except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale periods.

Section 11. Antennae. Except with the prior written approval and the authorization of the Board, no exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Property, or on the Property itself.

Section 12. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Living Unit or Lot may be leased for a period of less than 30 days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Living Unit.

Section 13. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including the Common Area, as the Board in its sole discretion deems appropriate or necessary.

ARTICLE XI

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

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Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Living Unit and the address of such party (a holder of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- (A) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot or Living Unit on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- (B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Living Unit subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;
- (C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article XI; and
- (E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 3. Discontinuance of Professional Management. When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Lots to which at least 67% of the votes in the Association are allocated and the approval of eligible holders holding mortgages on Lots or Living Units which have at least 51% of the votes of Lots or Living Units subject to eligible holder mortgages.

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Section 4. Termination; Reallocation: Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must have the written approval of eligible holders holding mortgages on Lots which have at least 51% of the votes of Lots subject to eligible holder mortgages. No reallocation of interests in the Common Area or the Association resulting from a partial condemnation or partial destruction of the project may be effected without the prior written approval of eligible holders holding mortgages on all remaining Lots whether existing in whole or in part, and which have at least 51% of the votes of such remaining Lots subject to eligible holder mortgages.

Section 5. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Living Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 6. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage shall not be liable for the unpaid assessments of the Lot which were payable prior to the acquisition of title to or possession of such Lot by the First Mortgagee.

Section 7.A. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Lots or their assigns (based upon one vote for each First Mortgage owned), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder including the Declarant) of the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- (A) terminate the legal status of the project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);

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(B) by act or omission, seek to abandon, petition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed such a transfer;

(C) use hazard insurance proceeds for losses to any Common Area or other common property for other than the repair, replacement or reconstruction of such common property;

(D) add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Area (or exterior maintenance of Living Units if applicable);
- (4) Insurance or Fidelity Bonds;
- (5) Rights to use of the Common Area;
- (6) Responsibility for maintenance and repair of the several portions of the project;
- (7) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (8) Boundaries of any Lot;
- (9) The interests in the general Common Area;
- (10) Convertibility of Lots into Common Area or of Common Area into Lots;
- (11) Leasing of Lots or Living Units;
- (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot or Living Unit;
- (13) Any provisions which are for the express benefit of First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots;

except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Areas which might occur pursuant to any plan of expansion or phased development contained in this Declaration;

(E) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or

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the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of the Common Area or other common property, party walls or common fences, or the upkeep of lawns and plantings.

For purposes of this section, an addition or amendment to such documents shall not be considered material if it is made (I) for the purpose of correcting clerical, typographical or technical errors, (II) for clarification only, (III) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (IV) to induce any of the agencies or entities mentioned or referred to in subsection (III) hereinabove to make, purchase, sell, insure or guarantee First Mortgages covering Lots and Living Units, or (V) to bring such documents into compliance with any statutory requirements, and any such addition or amendment to such documents which is so considered not to be material may be made by Declarant acting alone and without the consent, approval or joinder of the Owners, the Association, any First Mortgagees, any other mortgagees or any other person. ®

An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

Section 7.B. FHA/VA Approval. As long as there is a Class 2 Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration if, at the time such actions are taken, the Federal Housing Administration or the Veterans Administration is then the Owner of a Lot, an eligible mortgage holder or an eligible insurer or guarantor:

- (A) the annexation to the Property of any property other than all or any portion of the Additional Real Estate or any of the Conveyed Lots; provided, however, that in any and all events such approval is not and shall not be required for annexation to the Property of all or any portion of the Additional Real Estate or any of the Conveyed Lots;
- (B) dedication to the public or to or for any public use or purpose of any

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and shall not be required for the granting of easements to utility companies, public or private, for the installation, maintenance repair, replacement and servicing of equipment and facilities necessary to provide all utility services to the Property; and

- (C) amendment of this Declaration; provided however, that such approval is not and shall not be required for any amendment or supplement to this Declaration made by Declarant or the owners of the Conveyed Lots (i) for the purpose of exercising its or their rights as set forth herein to expand the Property within the limits, and in accordance with the procedures, contained in this Declaration, or (ii) for any of the purposes set forth in Subparagraphs (I) through (V), inclusive, of Section 7.A. hereinabove.

Section 8. Declarant's Joinder. In addition to the other requirements for amendment of this Declaration and the By-Laws contained herein, the written joinder and consent of the Declarant shall be required for any amendment of either this Declaration or the By-Laws until the conveyance by Declarant to an Owner other than Declarant of the last Lot existing as part of the Property on the Applicable Date. This right may be waived at any time by recording a written waiver executed and acknowledged by Declarant.

Section 9. Examination of Books and Records. First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 10. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 11. Designation of Representative. Any holder of a First Mortgage on a Lot or Living Unit may designate a representative to attend meetings of members, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved.

Section 12. Distribution of Insurance Proceeds and Condemnation Awards.

... as such Declaration or the By-Laws shall be construed as giving

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to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

ARTICLE XII.

INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of, the agencies and entities mentioned or referred to in Subparagraph (III) of Section 7.A. of Article XI of this Declaration, to-wit:

- (A) Master or blanket type policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Living Units located on each Lot, and the Common Area (including all of the fixtures installed therein as of the date thereof, and specifically including, without limiting the generality of the foregoing, interior walls, interior doors, built-in cabinets and counters and electrical and plumbing conduits, pipes and fixtures initially installed by the party constructing such living unit, and any fixtures, equipment or other property within a living unit which are to be financed by a First Mortgage to be made, purchased, sold, insured or guaranteed by an agency or entity mentioned or referred to in Subparagraph (III) of Section 7.A. of Article XI of this Declaration, and including also common personal property, supplies, and building service equipment, but not including carpeting, drapes, wallcoverings, fixtures, furniture, furnishings, or other personal property supplied or installed by Owners or tenants and also not including land, foundations, excavation and other items normally excluded from coverage) and covering the interests of the Association, the Board of Directors and all Owners and their mortgagees, as their interests may appear, for full insurable replacement cost, as determined annually by the Board of Directors. If

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permitted by the insurance company writing the policy, improvements and betterments not part of the Living Unit as originally constructed may, at the direction and sole cost and expense of the Owner of the subject Lot, be issued under a rider to the master policy, that part of the premium allocable to such improvements and betterments being chargeable against the specific Lot to which it applies. Said policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows:

"Pebblebrook Homeowners Association, Inc. for the use and benefit of the individual Owners".

The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with respect to the Common Area equally with each other Lot, and with respect to each Living Unit, in proportion to the insurable value of such Living Unit compared to the aggregate insurable value of all Living Units. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request. Policies must provide for the recognition of any Insurance Trust Agreement.

If reasonably available, such policies shall include:

- (1) Agreed Amount Endorsement (or like endorsement);
- (2) Inflation Guard Endorsement;
- (3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril;
- (4) Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location; and
- (5) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.

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- (B) Workmen's compensation, occupational disease and like insurance (if the Association has eligible employees);
- (C) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:
 - (1) covering events occurring anywhere on the Common Area (and public ways, if any) or arising out of or in connection with the use, ownership or maintenance of the Common Area;
 - (2) covering without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
 - (3) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and
 - (4) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.)
- (D) Such other insurance as the Board of Directors may determine.
- (E) All such policies must provide that they may not be cancelled or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owners' Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, and his carpeting, wallcovering, fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant, provided that all such policies must, if obtained, contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

Section 3. Additional Coverages. In addition and supplemental to the foregoing powers, and not in limitation thereof, the Board of Directors shall have

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the authority at all times without action by the Owners to obtain and maintain in force all coverages and endorsements required by any agency or entity mentioned or referred to in subparagraph (III) of Section 7.A. of Article XI of this Declaration, for the acceptance of mortgages on Living Units or Lots, as such requirements are amended from time to time.

Section 4. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any Insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Each Owner, by acceptance of a deed to his, her or its Lot, hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee is hereby required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgage holders, as their interests may appear, and to apply and administer the same as follows:

- (A) All insurance proceeds paid to the Association or Insurance Trustee (hereinafter sometimes referred to merely as "Trustee") shall be deposited in escrow with a title insurance company or other depository acceptable to the Trustee and a majority of First Mortgages of record.
- (B) The Owner of the Living Unit with respect to which the insured loss occurred shall, within thirty (30) days after insurance proceeds are deposited in accordance with paragraph (A) above, enter into a firm contract with a qualified builder providing

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for the reconstruction or remodeling of the Living Unit, to substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the Trustee for said Living Unit, until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the Trustee and First Mortgagee. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than 180 days after said insurance proceeds are deposited in escrow as aforesaid. The Association and First Mortgagees of record of the Living Units affected and the Lots underlying the same shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided and any such advances shall be a lien upon the Lot or Lots, subordinated, however, to the interests of First Mortgagees of record.

- (C) In the event the Owner fails to enter into a contract as provided in subparagraph (B) above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the Trustee or the First Mortgagee of record, with the consent of the Trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Living Unit, and the Trustee or First Mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligation incurred pursuant to said contracts, without liability of any kind to the Owner, including, but not limited to, interest on said insurance proceeds. The Trustee may employ any bonded party or parties as its agents in exercising those functions given to it in this Section 4. The Trustee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and to collect said charge from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of an insurance premium paid by the Association.

- (D) Disbursement of funds on deposit pursuant to subparagraph (A) above, for contracts for reconstruction or remodeling entered into under subparagraphs (B) and (C) above, shall be made by a title insurance company or other agent ("Agent") selected by Trustee and the affected First Mortgagees of record, subject to the following:
- (1) Article VI of these covenants entitled "Architectural Controls" shall apply to all said reconstruction or remodeling.
 - (2) Receipt by Agent of such sworn construction statements, lists of subcontractors, lien waivers and receipts as it shall determine to be appropriate. Disbursements may be by periodic or progress payments, and Agent may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with plans and specifications. Agent shall be entitled to a reasonable fee for the services rendered by it, and the Trustee may collect such fee from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of insurance premiums paid by the Association.
 - (3) In the event a contract is entered into pursuant to subparagraph (B) hereinabove, the written consent of the Owner to said payment or payments.
- (E) In the event that a remodeling or reconstruction contract is, for any reason, not entered into pursuant to the provisions of subparagraphs (B) and (C) hereinabove, within 180 days after deposit of insurance proceeds in escrow for a damaged or destroyed living Unit, as herein provided, or in the event there are excess funds after reconstruction or remodeling, the proceeds or excess, as the case may be, shall be disbursed to each Owner and Mortgagee of record of the affected Lot as their interests appear.
- (F) In the event the Owner whose property is damaged fails to make satisfactory arrangements for the repair and reconstruction of the damaged property and, in the event the Trustee decides to repair and reconstruct the damaged property and it is determined by it that the insurance proceeds are not sufficient for all costs and expenses associated therewith, the Association or the First Mortgagee may deposit, arrange for and disburse funds over and above the insurance proceeds to complete the repair and reconstruction and to pay the costs associated and related therewith. Upon completion of the work, the Board of Directors may levy a Special-Charge Assessment against the Owner, which Special-Charge Assessment shall be a lien against the Lot having the effect of a special assessment lien under Article V

hereof, but superior to all other annual and special assessments, and which lien may be enforced in the same manner as provided herein for other assessment liens. The Special-Charge Assessment shall be in the amount expended by the Trustee over and above the insurance proceeds received by the Trustee to repair and reconstruct the Owner's premises, including necessary costs, expenses and fees associated with the work.

- (G) Betterments or improvements made by any Owner to his Lot or Living Unit (subsequent to the date of initial completion of a Living Unit on such Lot by Declarant or others) shall be the responsibility of the Owner to insure separately (or by rider as above provided) if he desires the same insured. If the Trustee or First Mortgagee undertakes the reconstruction or remodeling of a Living Unit as above provided, the same need be restored only to substantially the same condition as the Living Unit was in as of the completion of original construction thereof.

Section 5. Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessments levied by the Association, and such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

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ARTICLE XIII.

EMINENT DOMAIN

Section 1. The Association shall represent the Owners in any condemnation proceedings and in any negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for his, her or its Lot, each Owner appoints the Association as such Owner's agent and attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

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Section 2. Reconstruction. In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof), and the project is terminated by the election hereinabove required, the proceeds shall be allocated equally among each Lot, payable jointly to the Owners and mortgage holders thereof.

ARTICLE XIV.

GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinabove provided.

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Section 3. Access. For the purpose solely of performing the repairs and maintenance authorized by this Declaration, the Association, through its duly authorized agents, employees and contractors, shall have the right, after reasonable notice to the Owner (except in an emergency in which case no notice shall be required), to enter upon and into any Lot and Living Unit.

Section 4. Emergency Access. For the purpose of performing emergency repairs under this Declaration, or of taking emergency action to seal a Living Unit from weather or otherwise to prevent damage or destruction to any Lot or Living Unit, the Association, through its duly authorized agents, employees and contractors, shall have the right to enter upon and into any Lot or Living Unit at any time, without notice, with such persons and material as the Association deems necessary, to accomplish such emergency repairs or to take such emergency action.

Section 5. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing.

Section 7. Captions. The Article and Section headings herein are intended for convenience of reference only and shall not be given any substantive effect.

Section 8. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

IN WITNESS WHEREOF, the said PEBBLE BROOK DEVELOPMENT CO., an Indiana general partnership, has caused this document to be executed as of the day and year first above written.

PEBBLE BROOK DEVELOPMENT CO.,
an Indiana general partnership

By: Kenneth E. Thompson
Kenneth E. Thompson, General Partner

This Instrument was prepared by Dixon B. Dann, Attorney-at-law.

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STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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Before me, a Notary Public in and for said County and State, personally appeared Kenneth E. Thompson, a General Partner of PEBBLE BROOK DEVELOPMENT CO., an Indiana general partnership, and acknowledged the execution of the above and foregoing instrument for and on behalf of said partnership for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 30th day of September, 1985.

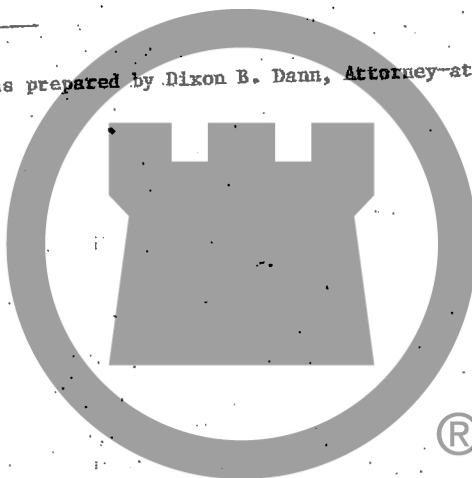
My Commission Expires:
August 23, 1987

Melinda M. Styer
Melinda M. Styer



My County of Residence:
Jahnson

This instrument was prepared by Dixon B. Dann, Attorney-at-law.



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CHICAGO TITLE

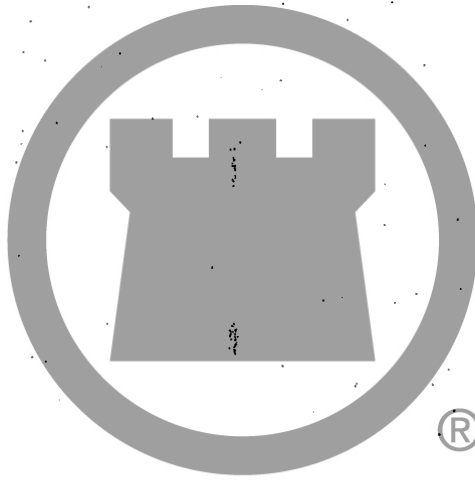
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Legal Description of
Original Real Estate

Lots 2, 3, 4, 7 and 9 in Pebble Brook-Section One, an Addition in Hamilton County, Indiana, the plat of which is recorded in Plat Book 11, Pages 59 through 61, inclusive, in the office of the Recorder of Hamilton County, Indiana.



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Legal Description
of Conveyed Lots

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Tract "5A":

A part of lot number 5, in the Secondary Plat for Pebble Brook Section One, as recorded in Plat Book 11, pages 59, 60 and 61, in the Office of the Recorder of Hamilton County, Indiana; being more particularly described as follows:

Beginning at the Northeast corner of said lot, thence South 34 degrees 59 minutes 53 seconds West along the Easterly line of said lot a distance of 135.76 feet to the Southeast corner of said lot, said point being on a 16.003627 degree curve to the left; the radius point of said curve lying South 24 degrees 54 minutes 30 seconds West 350.02 feet from said point; thence Westerly along said curve a distance of 36.35 feet to a point lying North 19 degrees 05 minutes 25 seconds East 350.02 feet from the radius point thereof; thence North 15 degrees 04 minutes 18 seconds East 145.97 feet to a point on the North line of said lot, lying North 59 degrees 30 minutes 07 seconds West 85.42 feet from the Northeast corner of said lot; thence South 59 degrees 30 seconds east along the North line thereof 85.42 feet to the point of beginning. Containing 0.19 acre more or less.

Tract "5B":

Lot number 5, in the Secondary Plat for Pebble Brook Section One, as recorded in Plat Book 11, Page 59, 60 and 61, in the Office of the Recorder of Hamilton County, Indiana; except the following described tract;

Beginning at the Northeast corner of said lot, thence South 34 degrees 59 minutes 53 seconds West along the Easterly line of said lot a distance of 135.76 feet to the Southeast corner of said lot, said point being on a 16.003627 degree curve to the left; the radius point of said curve lying South 24 degrees 54 minutes 30 seconds West 350.02 feet from said point; thence Westerly along said curve a distance of 36.35 feet to a point lying North 19 degrees 05 minutes 25 seconds East 350.02 feet from the radius point thereof; thence North 15 degrees 04 minutes 18 seconds East 145.97 feet to a point on the North line of said lot, lying North 59 degrees 30 minutes 07 seconds West 85.42 feet from the Northeast corner of said lot; thence South 59 degrees 30 seconds east along the North line thereof 85.42 feet to the point of beginning. Containing 0.20 acre more or less.

Exhibit "B"

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Legal Description of
Additional Real Estate

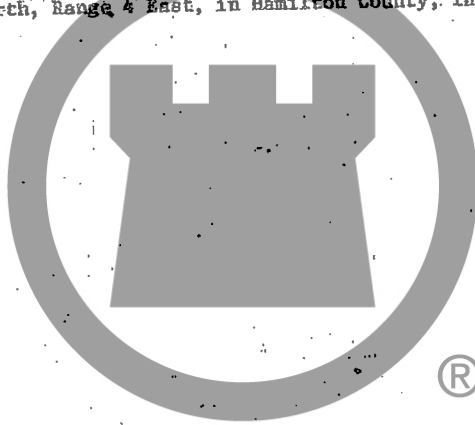
TRACT I:

All real estate in Pebble Brook-Section One, an Addition in Hamilton County, Indiana, the plat of which is recorded in Plat Book 11, Pages 59 through 61, inclusive, in the office of the Recorder of Hamilton County, Indiana.

EXCEPTING THEREFROM, (a) the Original Real Estate, (b) the Conveyed Lots, and (c) such portions of the real estate in Pebble Brook-Section One as were dedicated to the public by the plat hereinabove described.

TRACT II:

Any real estate now owned or hereafter acquired by Pebble Brook Development Co., located adjacent to the real estate included in Pebble Brook-Section One, in the East Half of Section 33, Township 19 North, Range 4 East, in Hamilton County, Indiana.



CHICAGO TITLE

Exhibit "C"

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Jennifer J Hayden
HAMILTON County Recorder IN
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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
PEBBLE BROOK HOMEOWNERS ASSOCIATION, INC.

THIS AMENDED AND RESTATED DECLARATION (hereinafter called "the Declaration" or "this Declaration") has been duly adopted by the Owners pursuant to the provisions of this Declaration.

WITNESSETH:

WHEREAS, There heretofore has been executed a Declaration of Covenants, Conditions and Restrictions for Pebble Brook homeowners Association, Inc. dated October 1, 1985 and recorded on October 2, 1985 in the Hamilton County, Indiana Recorder's Office in Book 184 Page 761, as Instrument No. 8514742 (the "Original Declaration"); and

WHEREAS, Declarant (Pebble Brook Development Co., an Indiana general partnership) was the owner of the real estate in Hamilton County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Original Real Estate"); and

WHEREAS, Declarant has heretofore conveyed to various other parties the real estate in Hamilton County, Indiana, more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Conveyed Lots"); and

WHEREAS, Declarant was also the owner of the Real Estate in Hamilton County, State of Indiana, more particularly described as Tract I in Exhibit "C" attached hereto and incorporated herein by reference, and the real estate more particularly described as Tract II in said Exhibit "C" (hereinafter referred to, collectively, as the "Additional Real Estate"); and

WHEREAS, Declarant created on the Original Real Estate and the Additional Real Estate a residential community with public streets for the benefit of such residential community, to be known as PEBBLEBROOK FAIRWAY HOMES; and

WHEREAS, Declarant desired to provide for the preservation and enhancement of the values and amenities of such community and to this end, Declarant desired to subject the Original Real Estate together with the Additional Real Estate and to permit the owners of each of the Conveyed Lots a limited right to subject the Conveyed Lots, to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Original Real Estate and the Additional Real Estate and the Conveyed Lots as may be hereafter made subject to the terms of the Original Declaration, as

hereinafter provided) and each owner of all or part thereof; and

WHEREAS, Declarant deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering the common facilities (if any) located on the Property (hereinafter defined), administering and enforcing the covenants and restrictions contained in the Original Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance, repairs and replacements of buildings as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name "Pebble Brook Homeowners Association, Inc.", as such agency for the purpose of exercising such functions; and

WHEREAS, the Declarant declared that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated herein, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

NOW THEREFORE, the Original Declaration is amended and restated as follows:

ARTICLE I.

DEFINITIONS

Section 1. The following words when used in this Declaration or any supplemental declaration (unless the context shall prohibit) shall have the following meanings:

A. Intentionally Omitted.

B. Intentionally Omitted.

C. "Association" shall mean Pebble Brook Homeowners Association, Inc., an Indiana nonprofit corporation.

D. "Board" or "Board of Directors" shall mean the board of directors of the Association.

E. Intentionally Omitted.

F. "Conveyed Lots" shall mean the parcels of real estate in Hamilton County,

Indiana, described in Exhibit "B" attached to and incorporated in this Declaration.

G. Intentionally Omitted.

H. "Initial Plat" shall mean that certain subdivision plat of the Original Real Estate, Tract I of the Additional Real Estate and the Conveyed Lots, recorded in the office of the Recorder of Hamilton County, Indiana on September 4, 1984, in Plat Book 11, pages 59 through 61, inclusive.

I. Intentionally Omitted.

J. "Living Unit" shall mean a residential housing unit consisting of a group of rooms and hallways, which are designed or intended for use as living quarters for one family or housekeeping unit. For the purpose of determining membership in the Association, each Living Unit as initially constructed on a Lot by Declarant or others shall be considered as a separate and individual unit. In addition, Living Unit shall be deemed to include any enclosed garage, enclosed or covered porch, or patio/appurtenant co such Living Unit.

K. "Lot" shall mean and refer to any and all plot of land included in the Property designed and intended for use as a building site for, or developed and improved for use as, a Living Unit. However, notwithstanding the foregoing, where a Living Unit (i) is separated from an adjacent Living Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Living Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between such adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as such boundary line or lines were described in the deed for such Lot from Declarant to another Person; in addition, where any exterior wall of a Living Unit is not a Party Wall but extends outside the boundary lines (lot lines) of the Lot upon which such Living Unit is primarily located (as such boundary line or lines were described in the deed for such Lot from Declarant to another Person), the boundary lines of such Lot shall be deemed extended to the extent necessary to include all of the ground area occupied by such Living Unit. It is the intent hereof that, in any and all events, this Declaration and any recorded subdivision plat of the Property or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Living Unit shall be and constitute part of the Lot upon which such Living Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Living Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any recorded subdivision plat of the Property or any part thereof.

L. "Member" shall mean any person or entity holding membership in the Association as provided in Article III hereof.

K. "Mortgage" shall mean any mortgage or other security instrument by which a Lot or

any part thereof or any structure thereon is encumbered.

N. "Mortgagee" shall mean any person or entity named as the Mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage.

O. Intentionally Omitted.

P. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Q. "Person" whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

R. "Property" shall mean and refer to the Original Real Estate together with such portions of the Additional Real Estate and the Conveyed Lots as have, from time to time, been subjected to, and are, at any time, subject to this Declaration.

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

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION
DECLARANT'S RIGHT TO SUBJECT ADDITIONAL
REAL ESTATE TO THIS DECLARATION.
SUBJECTING CONVEYED LOTS TO THIS DECLARANT!

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. The Owner of any Lot at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

Section 2. Intentionally Omitted.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify, the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have one class of voting membership. Association members shall be all Owners of Lots and shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of members upon which the members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days after written notice to the Owner of such default, the Board may, by majority vote suspend such Owner's right to vote as a member of the Association until all payments are brought current and all defaults remedied.

ARTICLE IV.

PROPERTY RIGHTS

Section 1. General Provisions.

A. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots, and their respective heirs, successors, personal representatives or assigns.

B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2006, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Except as hereinafter provided, this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Owners. Certain amendments also require additional approval as specified in Article XI hereof.

Section 2. Intentionally Omitted.

Section 3. Intentionally Omitted.

Section 4. Association's Rights.

A. Intentionally Omitted.

B. Intentionally Omitted.

C. Intentionally Omitted.

D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration. ®

E. Intentionally Omitted.

Section 5. Intentionally Omitted.

Section 6. Intentionally Omitted.

Section 7. Intentionally Omitted.

CHICAGO TITLE

Section 8. Parking Rights. Each Lot contains parking areas (including garages) for the use of its Owner. The garages are primarily for use in parking motor vehicles and may not be used for living area.

ARTICLE V.

ASSESSMENTS

Section 1. Personal Obligations. Each Owner of a Lot by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of hazard and liability insurance for any common property; hazard insurance for Living Units; exterior maintenance of Living Units and Lots; snow removal; and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of any property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in advance in twelve equal monthly installments on the first day of each and every month or, if so determined by the Association, in such other periodic installments as may be specified by the Association: Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such Lot on the date said assessment become due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use, transfer or abandonment of his Lot or Living Unit.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property, for the exterior maintenance of Living Units and Lots, and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of any property that must be replaced on a periodic basis and those portions of the exterior of Living Units and Lots which the Association is required to maintain and which must be replaced on a periodic basis. Such reserve fund shall be maintained out of the regular annual assessments.

Section 3. Annual Assessments. Until December 31, 1986, the maximum annual assessment shall be at the monthly rate of ~~(4)~~ Sixty Dollars (\$60.00) per Lot for each Lot upon which a Living Unit:

- A. From and after December 31, 1986, the maximum annual assessments may be increased each year not more than 10% above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of the membership.
- B. From and after December 31, 1986, the maximum annual assessments may be increased more than 10% above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of Members who are voting in person or by proxy, at a meeting called for this purpose.
- C. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any unanticipated or extraordinary exterior maintenance of Living Units and Lots, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total-votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast twenty-five percent (25%) of the total votes of the membership shall constitute a quorum.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected on a monthly basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines.

Section 7. Intentionally Omitted. ®

Section 8. Commencement of Annual Assessments. By November 1 of each year the Board shall fix the amount of annual assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 9. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 10. Nonpayment of Assessments. All monthly assessments are due on the first day of each month. If the assessment is not paid, in full, within fifteen (15) days after the due date, the Board may assess a late fee not to exceed Twenty-five Dollars \$25. If the monthly assessment is not paid, in full, by the end of the calendar month in which it is due, the Board may assess an additional late fee not to exceed Fifty Dollars (\$50). All payments received will be applied first to pay late fees and then to pay delinquent assessments and then to pay current assessments.

Any assessments which are not paid when due shall be deemed delinquent and shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interest, late fees, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 11. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hamilton County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association may proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency, such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed the person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, tent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

Section 12. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition.

ARTICLE VI.

ARCHITECTURAL CONTROLS

Section 1. Architectural Control Committee Authority. No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Property, additional fences, or changes in existing fences, hedges, walls, walkways and other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the Living Units and other buildings and improvements on the Property, until the written plans and specifications showing in reasonable detail the nature, kind, shape, height, materials (including color), location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Property by an Architectural Committee composed of the Board of Directors of the Association or three (3) or more representatives appointed by the Board of Directors. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said written plans and specifications have been submitted to it, such approval will be deemed to have been given; provided however, that the failure of the Committee to approve or disapprove a proposed written plan and specifications or to commence a suit shall not be construed as an approval to commence, erect, or maintain an exterior addition, alteration or change that conflicts with an expressed provision of this Declaration or the By-Laws. If no such submission has been made to the Architectural Committee, suit to enjoin or force the removal of such additions, alterations or changes may be instituted at any time by the Association or any Owner. The approvals of the Architectural Committee required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required to be obtained from any other persons or governmental agencies pursuant to the terms of the Initial Plat, or any other plat or otherwise.

Section 2. Restoration in Accordance with Original Plans. Any restoration or repair of the exterior of Living Units, after a partial condemnation or damage due to fire or other casualty, shall be performed substantially in accordance with this Declaration and the original plans and specifications for the same, unless other action is approved by eligible holders holding First Mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to eligible holders of First Mortgages.

ARTICLE VII.

OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Exteriors. In order to preserve the uniform and high standard of the Property, the Association shall be responsible for the maintenance and repair of the exterior of all Living Units and any other buildings and improvements, located on Lots, and the Lots themselves, which responsibility shall include, but not be limited to, the following: the maintenance and repair of exterior surfaces of all buildings on the Property, including, without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, downspouts and overhangs, the maintenance and repair of exterior windows and doors (excluding glass and screens), and necessary painting, and repair of patio structures as originally built on a Lot (but not of additions thereto made by an Owner). The cost of replacement of windows and doors shall be shared on a consistent basis between the individual Living Unit Owner and the Association. The Board may adopt rules and regulations regarding and defining the scope of the exterior maintenance, which rules shall be uniform and consistent among all Lots and improvements. Any changes in those rules and regulations shall be approved by a majority of the Owners in attendance in person or by proxy at the annual meeting of the Association or at a special meeting called for that purpose. The Board shall distribute a copy of the rules and regulations on exterior maintenance on an annual basis or within thirty (30) days after an approved amendment thereto. All maintenance and repair of the individual Living Units, including driveways and sidewalks serving a particular Unit, and any other buildings shall be the sole obligation of and shall be performed at the sole cost and expense of the individual Owner thereof, except to the extent the exterior maintenance and repair is provided by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

Section 2. Lawn and Planting Maintenance. The Association will be responsible for lawn maintenance items such as mowing, fertilizing, grub control, curb trimming or other maintenance items as specified in the Board's rules and regulations. Each individual Owner shall be responsible for watering the Owner's lawn as required to maintain a healthy lawn condition. Each individual Owner shall be responsible for maintaining landscaping, trees and plantings on their respective Lots that are acceptable to the Board to maintain the beauty of the properties. The Association shall be responsible for the maintenance of the entrance areas located at Little Chicago Road and the island on Sand Brook Drive between lots 39 and 43, including the plantings, structure and signage.

Section 3. Services. The Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the

operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Property must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

Section 4. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property (if any) to residents of his Lot. A transfer of title to a Lot shall, transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful, rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

Section 5. Intentionally Omitted.

Section 6. Hazard and Liability Insurance. The Association shall procure fire and extended coverage insurance common property on a current replacement cost basis in an amount not less than 100% of the value (based on current replacement only); and shall use the proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages ("First Mortgagees") on Living Units, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Living Units establishing entitlement to such reimbursement.

ARTICLE VIII.

OWNERS' MAINTNEANCE

Section 1. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Living Unit, patio and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association. An Owner shall do no act nor any work that will impair the, structural soundness or integrity of any structure, or an adjoining Living Unit, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units, or their Owners.

Section 2. Heating of Living Units. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Living Unit which might result in

damage to that or other Living Units, all Owners, shall maintain the temperature in their Living Units, at all times, at least at 55 degrees Fahrenheit, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control. Any damage resulting from the refusing or failure of an Owner to so maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's reasonable control) the cost thereof shall be assessed against the Lot of the refusing or failing Owner.

ARTICLE IX.

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Living Unit upon the Property and which connects two (2) or more Living Units or forms part of walls in two (2) or more Living Units shall constitute a party wall (any such wall being herein referred to as a "Party Wall") and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of such Party Wall, proportionately.

Section 3. Destruction by Fire or Other Casualty. If any Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such Party Wall or by the Association, and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that any damage to a Party Wall is not covered and paid for by the insurance provided for herein, an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to such Owner's Lot and shall pass to such Owner's successors in title to such Lot.

Section 6. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of the Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefore from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.)

ARTICLE X.

GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS
APPLICABLE TO PROPERTY

Section 1. Living Unit and Lot Restrictions. No more than one Living Unit shall be erected or maintained on each Lot. No Living Unit shall be used for purposes other than as a single family residence, nor shall any trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. Intentionally Omitted.
- B. Intentionally Omitted.
- C. Lease, rental or use of a Living Unit for purposes consistent with this Section.
- D. The use of a Living Unit by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 2. Intentionally Omitted.

Section 3. Intentionally Omitted.

Section 4. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any other area within the Property or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any other area within the Property or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of the exterior of the Property and buildings thereon shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed in any Living Units, on any Lots or in the other area within the Property or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 5. Fences, Walls and Patios. No Owner shall relocate, heighten, lower or otherwise move or change any fence, wall or patio upon the Property except as provided in Article VI hereinabove.

Section 6. No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind or other

articles shall be hung out on any portion of Property or on a Lot so as to be visible from outside the Lot. The Property shall be kept free and clear of all rubbish, debris and other unsightly materials.

Section 7. Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot or any part thereof, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of 25% of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

Section 8. Prohibited Structures. No structure of a temporary character, trailer, boat, camper, bus, basketball hoops, tent, or shack shall be maintained on any Lot or on the Property outside of a garage or other approved structure, nor shall any garage or other building except a permanent residence be used on any Lot at any time as a residence or sleeping quarters, either temporarily or permanently.

Section 9. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot upon which the same are located. The design of such screened enclosure must be approved by the Association in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles (including station wagons and small trucks such as pickups and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, either permanently or temporarily.

Section 10. Signs. No signs of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require.

Section 11. Intentionally omitted.

Section 12. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the

Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Living Unit or Lot may be leased for a period of less than one (1) year. No individual may have an ownership interest in more than one leased Living Unit. For purposes of this Section, an individual has an ownership interest in a Living Unit if the individual's name is on the deed; if the individual has an ownership interest in an entity that directly, or through other entities, owns a Living Unit; or if the individual is the settlor or a beneficiary of a trust that owns a Living Unit, either directly or through other entities. Notwithstanding the provisions of this subsection, no individual may be required to sell or otherwise transfer ownership interest in a Living Unit that the individual acquired prior to January 1, 2009. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Living Unit.

Section 13. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the maintenance, use and enjoyment of the Property as the Board in its sole discretion deems appropriate or necessary.

ARTICLE XI.

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Living Unit and the address of such party (a holder of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- (A) Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot or Living Unit on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- (B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Living Unit subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 50 days;
- (C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

- (D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article XI; and
- (E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws, which is not cured within sixty (60) days.

Section 3. Discontinuance of Professional Management. When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Lots to which at least 67% of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on Lots or Living Units which have at least 51% of the votes of Lots or Living Units subject to eligible holder mortgages.

Section 4. Termination; Reallocation. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must have the written approval of eligible mortgage holders holding mortgages on Lots which have at least 51% of the votes of Lots subject to eligible holder mortgages. No reallocation of interests in the Association resulting from a partial condemnation or partial destruction of the project may be effected without the prior written approval of eligible mortgage holders holding mortgages on all remaining Lots whether existing in whole or in part, and which have at least 51% of the votes of such remaining Lots subject to eligible holder mortgages.

Section 5. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Living Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 6. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage shall not be liable for the unpaid assessments of the Lot which were payable prior to the acquisition of title to or possession of such Lot by the First Mortgagee.

Section 7.A. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the eligible mortgage holders of the Lots or their assigns (based upon one vote for each First Mortgage owned), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners of the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- (A) terminate the legal status of the project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);

- (B) Intentionally Omitted.
- (C) use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such common property;
- (D) add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:
- (1) Voting;
 - (2) Assessments, assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of Living;
 - (4) Insurance or Fidelity Bonds;
 - (5) Intentionally Omitted;
 - (6) Responsibility for maintenance and repair of the several portions of the project;
 - (7) Intentionally Omitted;
 - (8) Boundaries of any Lot;
 - (9) Intentionally Omitted;
 - (10) Convertibility of Lots into Common Area;
 - (11) Leasing of Lots or Living Units;
 - (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot or Living Unit;
 - (13) Any provisions which are for the express benefit of First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots, except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation
- (E) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of common property, party wall, or common fences, or the upkeep of lawns and plantings.

An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

Section 7. Intentionally Omitted.

Section 8. Intentionally Omitted.

Section 9. Examination of Books and Records. First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 10. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 11. Designation of Representative. Any holder of a First Mortgage on a Lot or Living Unit may designate a representative to attend meetings of members, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved.

Section 12. Distribution of Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the ByLaws shall be construed as giving to the Owner or to any party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

ARTICLE XII.

INSURANCE

Section 1. Maintenance of Insurance. The Association shall maintain, to the extent reasonably available, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of the agencies and entities mentioned or referred to in Subparagraph (III) of Section 7.A. of Article XI of this Declaration, to-wit:

- (A) Master or blanket type policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorms and water damage) insuring the Living Units located on each Lot, (including all of the fixtures installed therein as of the date thereof, and specifically including, without

limiting the generality of the foregoing, interior walls, interior doors, built-in cabinets and counters and electrical and plumbing conduits, pipes and fixtures initially installed by the party constructing such Living Unit, and any fixtures, equipment or other property within a Living Unit which are to be financed by a First Mortgage to be made, purchased, sold, insured or guaranteed by an agency or entity mentioned or referred to in Subparagraph (III) of Section 7.A. of Article XI of this Declaration, and including also common personal property, supplies, and building service equipment, but not including carpeting, drapes, wall coverings, fixtures, furniture, furnishings, or other personal property supplied or installed by Owners or tenants and also not including land, foundations, excavation and other items normally excluded from coverage) and covering the interests of the Association, the Board of Directors and all Owners and their mortgagees, as their interests may appear, for full insurable replacement cost, as determined annually by the Board of Directors. If permitted by the insurance company writing the policy, improvements and betterments not part of the Living Unit as originally constructed may, at the direction and sole cost and expense of the Owner of the subject Lot, be issued under a rider to the master policy, that part of the premium allocable to such improvements and betterments being chargeable against the specific Lot to which it applies. Said policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows:

"Pebble Brook Homeowners Association, Inc. for the use and benefit of the individual Owners.

The policies may also be issued in the name of an authorized representative of the Association, including any Insurance trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with each other Lot, with respect to each Living Unit, in proportion to the insurable value of such Living Unit compared to the aggregate insurable value of all Living Units. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request. Policies must provide for the recognition of any Insurance trust Agreement.

If reasonably available, such policies shall include:

- (1) Agreed Amount Endorsement (or like endorsement);
 - (2) Inflation Guard Endorsement;
 - (3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the, event of partial destruction of the project by an insured peril; and
 - (4) Intentionally Omitted;
 - (5) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primarily the event the Owner has other insurance covering the same loss.
- (B) Workmen's compensation, occupational disease and like insurance (if the Association has eligible employee.);
- (C) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:
- (1) covering events occurring anywhere on the public ways,
 - (2) covering without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common properties, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
 - (3) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and

(4) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.)

(D) Such other insurance as the Board of Directors may determine.

(E) All such policies must provide that they may not be cancelled or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owners' Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, and his carpeting, wall covering, fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant, provided that all such policies must, if obtained, contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner. Each Owner should carry, and be responsible for carrying, such additional insurance for his own benefit, insuring his personal liability due to any deficiency in insurance proceeds from the master policy.

Section 3. Additional Coverages. In addition and supplemental to the foregoing powers, and not in limitation thereof, the Board of Directors shall have the authority at all times without action by the Owners to obtain and maintain in force all coverages and endorsements required by any agency or entity mentioned or referred to in subparagraph (III) of Section 7.A. of Article XI of this Declaration, for the acceptance of mortgages on Living Units or Lots, as such requirements are tended from time to time.

Section 4. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any Insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Each Owner, by acceptance of a deed to his, her or its Lot, hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of Liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any

Insurance Trustee is hereby required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgage holders, as their interests may appear, and to apply and administer the same as follows:

- (A) All insurance proceeds paid to the Association or Insurance Trustee (hereinafter sometimes referred to merely as "Trustee") shall be deposited in escrow with a title insurance company or other depository acceptable to the Trustee and a majority of First Mortgagees of record.
- (B) The Owner of the Living Unit with respect to which the insured loss occurred shall, within thirty (30) days after insurance proceeds are deposited in accordance with paragraph (A) above, enter into a firm contract with a qualified builder providing for the reconstruction or remodeling of the Living Unit, to substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the trustee for said Living Unit, until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the Trustee and First Mortgagee. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than 180 days after said insurance proceeds are deposited in escrow as aforesaid. The Association and First Mortgagees of record of the Living Units affected and the Lots underlying the same shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided and any such advances shall be a lien upon the Lot or Lots, subordinated, however, to the interests of First Mortgagees of record.
- (C) In the event the Owner fails to enter into a contract as provided in subparagraph (B) above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the trustee or the First Mortgagee of record, with the consent of the Trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Living Unit, and the Trustee or First Mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligation incurred pursuant to said contracts, without liability of any kind to the Owner, including, but not limited to, interest on said insurance proceeds. The Trustee may employ any bonded party or parties as its agents in exercising those functions given to it in this Section 4. The Trustee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and to collect said charge from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of an insurance premium paid by the Association.
- (D) Disbursement of funds on deposit pursuant to subparagraph (A) above, for contracts for reconstruction or remodeling entered into under subparagraph (B) and (C) above, shall be made by a title insurance company or other agent (Agent) selected

by Trustee and the affected First Mortgagees of record, subject to the following:

- (1) Article VI of these covenants entitled "Architectural Controls" shall apply to all said reconstruction or remodeling.
 - (2) Receipt by Agent of such sworn construction statements, lists of subcontractor, lien waivers and receipts as it shall determine to be appropriate. Disbursements may be by periodic or progress payments, and Agent may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with plans and specifications. Agent shall be entitled to a reasonable fee for the services rendered by it, and the Trustee may collect such fee from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of insurance premiums paid by the Association.
 - (3) In the event a contract is entered into pursuant to subparagraph (B) hereinabove, the written consent of the Owner to said payment or payments.
- (E) In the event that a remodeling or reconstruction contract is, for any reason, not entered into pursuant to the provisions of subparagraphs (B) and (C) hereinabove, within 180 days after deposit of insurance proceeds in escrow for a damaged or destroyed Living Unit, as herein provided, or in the event there are excess funds after reconstruction or remodeling, the proceeds or excess, as the case may be, shall be disbursed to each Owner and Mortgagee of record of the affected Lot as their interests appear.
- (F) In the event the Owner whose property is damaged fails to make satisfactory arrangements for the repair and reconstruction of the damaged property and, in the event the Trustee decides to repair and reconstruct the damaged property and it is determined by it that the insurance proceeds are not sufficient for all costs and expenses associated therewith, the Association or the First Mortgagee may deposit, arrange for and disburse funds over and above the insurance proceeds to complete the repair and reconstruction and to pay the costs associated and related therewith. Upon completion of the work, the Board of Directors may levy a Special-Charge Assessment against the Owner, which Special-Charge Assessment shall be a lien against the Lot having the effect of a special, assessment lien under Article V hereof, but superior to all other annual and special assessments which lien may be enforced in the same manner as provided herein for other assessment liens. The Special-Charge Assessment shall be in the amount expended by the Trustee over and above the insurance proceeds received by the Trustee to repair and reconstruct the Own premises, including necessary costs, expenses and fees associated with the work.
- (G) Betterments or improvements made by any Owner to his Lot or Living Unit (subsequent to the date of initial completion of the Living Unit on such Lot by Declarant or others) shall be the responsibility of the Owner to insure separately (or

by rider as above provided) if he desires the same insured. If the Trustee or First Mortgagee undertakes the reconstruction or remodeling of a Living Unit as above provided, the same need be restored only to substantially the same condition as the Living Unit was in as of the completion of original construction thereof.

Section 5. Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessment, levied by the Association.

ARTICLE XIII.

EMINENT DOMAIN

Section 1. Intentionally Omitted.

ARTICLE XIV.

GENERAL PROVISIONS

Section 1. Enforcement. A violation or attempted violation of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association and any rules or regulations adopted by the Board may be enforced by a proceeding at law or in equity instituted by the Association or by any Owner against any person violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants. The failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association, or any Owner, successfully enforcing the covenants and restrictions, shall be entitled to the recovery of reasonable attorneys' fees and costs incurred in such enforcement.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinabove provided.

Section 3. Access. For the purpose solely of performing the repairs and maintenance authorized by this Declaration, the Association, through its duly authorized agents, employees and contractors shall have the right, after reasonable notice to the Owner (except in an emergency in which case no notice shall be required), to enter upon and into any Lot and Living Unit.

Section 4. Emergency Access. For the purpose of performing emergency repairs under this Declaration, or of taking emergency action to seal a Living Unit from weather or otherwise to prevent damage or destruction to any Lot or Living Unit, the Association, through its duly authorized agents, employees and contractors, shall have the right to enter upon and into any Lot or Living Unit at any time, without notice, with such persons and material as the Association deems necessary, to accomplish such emergency repairs or to take such emergency action.

Section 5. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing.

Section 7. Captions. The Article and Section headings herein are intended for convenience of reference only and shall not be given any substantive effect.

Section 8. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

PEBBLE BROOK HOMEOWNERS ASSOCIATION, INC.

By: Gene Monks

Gene Monks, President

ATTEST:

Jean Kent
Jean Kent, Secretary



CHICAGO TITLE

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

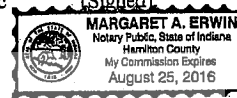
I, MARGARET ERWIN, a Notary Public in and for the County and State aforesaid, do hereby certify that Pebble Brook Homeowners Association, Inc., by and through Gene Monks, its President, and Jean Kent, its Secretary, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth

GIVEN under my hand and Notarial Seal this 3 day of DECEMBER 2008.

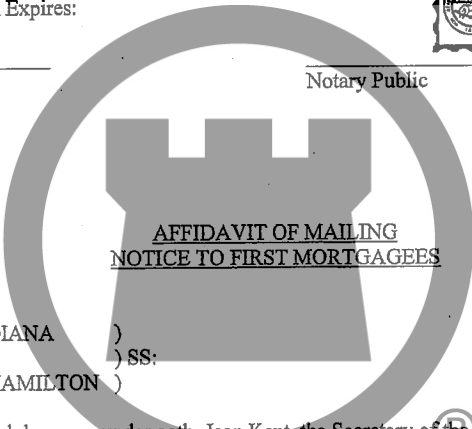
I reside in _____
County, Indiana

Margaret A. Erwin
Notary Public (Signed)

My Commission Expires: _____



Notary Public (printed)



STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

After being first duly sworn under oath, Jean Kent, the Secretary of the Pebble Brook Homeowners Association, Inc., hereby deposes and says she has mailed a copy of the foregoing Amended and Restated Declaration by certified United States mail to all holders of first mortgages of record entitled to such notice on this 3 day of Dec, 2008.

CHICAGO TITLE

Jean A. Kent
Jean Kent, Secretary

Before me, a Notary Public for the above County and State, personally appeared Jean Kent, the Secretary of the Pebble Brook Homeowners Association, Inc., and after being duly sworn under oath, acknowledged the execution of the foregoing Affidavit of Mailing Notice to First Mortgagees and stated the statements in said Affidavit are true.

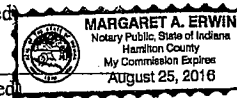
Witness my hand and Notarial Seal this 3 day of DECEMBER 2008.

I reside in _____
County, Indiana

My Commission Expires:

Margaret A. Erwin
Notary Public (Signed)

Notary Public (Printed)

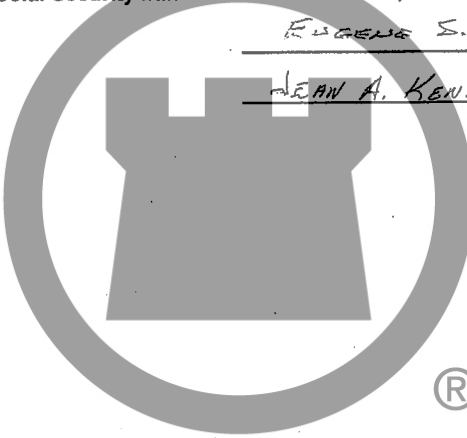


I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

EUGENE S. MONKS

JEAN A. KENT

Printed



®

CHICAGO TITLE
This document prepared by Stephen R. Buschmann, Thrasher Buschmann Griffith & Voelkel, P.
C., 151 N. Delaware Street, Suite 1900, Indianapolis, Indiana 46204

Legal Description of
Original Real Estate

Lots 2, 3, 4, 7 and 9 in Pebble Brook-Section One, an Addition in Hamilton County, Indiana, the place of which is recorded in Plan Book 11, Pages 59 through 61, inclusive, in the office of the Recorder of Hamilton County, Indiana.



CHICAGO TITLE

Exhibit "A"
Legal Description
Conveyed Lots

Tract "5A":

A part of lot number 5, in the Secondary Plat for Pebble Brook Section One, as recorded in Plat Book 11, pages 59, 60 and 61, in the Office of the Recorder of Hamilton County, Indiana; being more particularly described as follows:

Beginning at the Northeast corner of said lot, thence South, 34 degrees 59 minutes 53 seconds West along the Easterly line of said lot a distance of 135.76 feet to the Southeast corner of said lot, said point being on a 16.003627 degree curve to the left; thus radius point of said curve lying South 24 degrees 54 minutes 30 seconds West 350.02 feet from said point; thence Westerly along said curve a distance of 36.35 feet to a point lying North 19 degrees 05 minutes 25 seconds East 350.02 feet from the radius point thereof; thence North 15 degrees 04 minutes 10 seconds East 145.97 feet to a point on the North line of said lot, lying North 59 degrees 30 minutes 07 seconds West 05.42 feet from the Northeast corner of said lot; thence South 59 degrees 30 seconds east along the North line thereof 05.42 feet to the point of beginning. Containing 0.19 acre more or less.

Tract "5B":

Lot number 5, in the Secondary Plat for Pebble Brook Section One, as recorded in Plat Book 11, Page 59, 60 and 61, in the Office of the Recorder of Hamilton County, Indiana; except the following described tract;

Beginning at the Northeast corner of said lot, thence South 34 degrees 59 minutes 53 seconds West along the Easterly line of said lot a distance of 135.76 feet to the Southeast corner of Southeast lot, said point being on a 16.003627 degree curve to the left; the radius point of said curve lying South 24 degrees 54 minutes 30 seconds West 358.02 feet from said point; thence Westerly along said curve a distance of 36.35 feet to a point lying North 19 degrees 05 minutes 25 seconds East 358.02 feet from the radius point thereof; thence North 15 degrees 04 minutes 10 seconds East 145.97 feet to a point on the North line of said lot, lying North 59 degrees 30 minutes 07 seconds West 05.42 feet from the Northeast corner of said lot; thence South 59 degrees 30 seconds east along the North line thereof 05.42 feet to the point of beginning. Containing 0.20 acre more or less.

CHICAGO TITLE

Exhibit "B"
Legal Description of
Additional Real Estate

TRACT I:

All real estate in Pebble Brook-Section One, an Addition in Hamilton County, Indiana, the plat of which is recorded in Plat Book 11, Pages 59 through 61 inclusive, in the office of the Recorder of Hamilton County, Indiana.

EXCEPTING THEREFROM, (a) the Original Real Estate, (b) the Conveyed Lots, and (c) such portions of the real estate in Pebble Brook-Section One as were dedicated to the public by the plat hereinabove described.

TRACT II:

Any real estate now owned or hereafter acquired by Pebble Brook Development Co., located adjacent to the real estate included in Pebble Brook-Section One, in the East Half of Section 33, Township 19 North, Range 4 East, in Hamilton County, Indiana.



CHICAGO TITLE