

200400009608
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
02-13-2004 At 11:29 am.
DEC COV RES 65.00

**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SOMERSET**

CROSS-REFERENCE: FINAL PLAT
OF SOMERSET RECORDED AS
INSTRUMENT NO. _____

TABLE OF CONTENTS

ARTICLE I NAME..... 1

ARTICLE II DEFINITIONS..... 1

ARTICLE III APPLICATION 4

ARTICLE IV PROPERTY RIGHTS/COMMON PROPERTY 4

 4.1 Owners' Easement of Enjoyment of Common Property 4

 4.2 Rental of Dwellings..... 4

 4.3 Delegation of Use..... 5

 4.4 Conveyance and Maintenance of Common Property..... 5

ARTICLE V EASEMENTS/LOT MAINTENANCE..... 5

 5.1 Utility Easements..... 5

 5.2 Drainage Easements..... 5

 5.3 Landscape Maintenance Access Easements..... 5

 5.4 Sanitary Sewer Easements 6

 5.5 Utility Access Easement..... 6

 5.6 Non-Access Easement..... 7

 5.7 Other Easement Rights 7

 5.8 Private Utility Lines 7

 5.9 Relocation of Easements..... 7

ARTICLE VI PROTECTIVE COVENANTS AND USE RESTRICTIONS 7

 6.1 Residential Use and Occupancy Restrictions 7

 6.2 Dwelling Size..... 8

 6.3 Building Lines and Combined Lots 8

 6.4 Sidewalks..... 8

| | |
|--|----|
| 6.5 Construction, Completion, and Restoration of Dwellings | 8 |
| 6.6 Garages and Driveways | 8 |
| 6.7 Exterior Construction | 9 |
| 6.8 Landscaping | 9 |
| 6.9 Mailboxes | 9 |
| 6.10 Yard Lights | 9 |
| 6.11 Fences | 9 |
| 6.12 Gardens | 9 |
| 6.13 Swimming Pools..... | 9 |
| 6.14 Trash Collection | 9 |
| 6.15 Prohibited Items and Activities..... | 9 |
| 6.16 Basketball Goals..... | 10 |
| 6.17 Playground Equipment | 10 |
| 6.18 Flag Poles | 10 |
| 6.19 Exterior Antennae..... | 10 |
| 6.20 Parking..... | 10 |
| 6.21 Additional Restrictions and Building Standards..... | 10 |
| 6.22 Subdivision of Lots | 10 |
| 6.23 Motor Vehicle Repair | 10 |
| 6.24 Noxious or Offensive Activities | 10 |
| 6.25 Lot and Dwelling Maintenance..... | 11 |
| 6.26 Business Activity..... | 11 |
| 6.27 Animals | 11 |
| 6.28 Compliance with Drainage Requirements..... | 11 |
| 6.29 Signs | 11 |

| | |
|--|-----------|
| 6.30 Automobiles, Recreational Vehicles, Boats, Travel Trailers | 11 |
| 6.31 Garage and Yard Sales; Holiday Lights | 11 |
| 6.32 Lakes..... | 11 |
| 6.33 Trash..... | 11 |
| ARTICLE VII ASSOCIATION | 12 |
| 7.1 Membership..... | 12 |
| 7.2 Classes of Membership | 12 |
| 7.3 Co-Owners | 12 |
| 7.4 Board of Directors..... | 12 |
| 7.5 Responsibilities of the Association..... | 12 |
| 7.6 Correction of Violations | 13 |
| 7.7 Compensation | 13 |
| 7.8 Non-Liability of Directors and Officers..... | 13 |
| 7.9 Owner Disputes..... | 13 |
| ARTICLE VIII ASSESSMENTS | 14 |
| 8.1 Covenant for Assessments..... | 14 |
| 8.2 Initiation and Capital Fund Assessments | 14 |
| 8.3 Purpose of Annual Assessments | 14 |
| 8.4 Maximum Annual Assessment..... | 14 |
| 8.5 Special Assessments for Capital Improvements and Operating Deficits | 15 |
| 8.6 Special Assessments for Breaches of Standards | 15 |
| 8.7 Notice and Quorum for Any Action Authorized Under Sections 8.3(b) and 8.4..... | 15 |
| 8.8 Uniform Rate of Assessment | 15 |
| 8.9 Date of Commencement of Annual Assessments; Due Dates | 15 |

| | |
|--|-----------|
| 8.10 Effect of Nonpayment of Assessments: Remedies of the Association..... | 16 |
| 8.11 Subordination of the Lien to Mortgages | 16 |
| 8.12 Exemption from Assessments; Developer's Subsidy | 16 |
| 8.12 Developer's Pool Rights | 16 |
| ARTICLE IX SOMERSET ARCHITECTURAL REVIEW COMMITTEE..... | 16 |
| 9.1 Creation..... | 16 |
| 9.2 Purposes and Powers of the Committee..... | 16 |
| 9.3 Approval Procedures and Standards | 17 |
| 9.4 Enforcement..... | 17 |
| 9.5 Committee Liability | 17 |
| 9.6 Fees | 18 |
| ARTICLE X MORTGAGES..... | 18 |
| 10.1 Notice to Association | 18 |
| 10.2 Notice to Mortgagees | 18 |
| ARTICLE XI AMENDMENT..... | 18 |
| 11.1 Amendment by Association | 18 |
| 11.2 Recording..... | 19 |
| 11.3 Amendment by Developer | 19 |
| ARTICLE XII INSURANCE..... | 19 |
| 12.1 Liability Insurance..... | 19 |
| 12.2 Other Insurance..... | 19 |
| 12.3 Insurance Proceeds..... | 19 |
| 12.4 Casualty | 19 |
| ARTICLE XIII REAL ESTATE TAXES AND ASSESSMENTS | 20 |
| 13.1 Real Estate Taxes | 20 |

| | |
|---|-----------|
| 13.2 Allocation..... | 20 |
| ARTICLE XIV GENERAL PROVISIONS | 20 |
| 14.1 Right of Enforcement..... | 20 |
| 14.2 Government Enforcement..... | 20 |
| 14.3 Delay or Failure to Enforce | 20 |
| 14.4 Duration..... | 20 |
| 14.5 Severability..... | 21 |
| 14.6 Titles..... | 21 |
| 14.7 Applicable Law | 21 |
| 14.8 Sales Offices and Models | 21 |

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR SOMERSET**

THIS DECLARATION is made this ____ day of _____, 2004, by Somerset Residential Development, LLC ("Developer")

Recitals

A. Developer is the owner of certain real estate more particularly described in **Exhibit A**, attached to and made a part of this Declaration (the "Real Estate").

B. Developer has subdivided, or intends to subdivide, the Real Estate into residential lots as generally shown on the Plat for "Somerset" as previously or hereafter recorded in the office of the Recorder of Hamilton County, Indiana.

C. Developer desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of all or any part thereof.

D. Developer further desires to create or provide for the creation of an organization to which shall be delegated and assigned, among other things, the powers of administering and enforcing the covenants, conditions and restrictions contained in this Declaration and set forth on the Plat of the Real Estate as previously or hereafter recorded in the office of the Recorder of Hamilton County, Indiana (the "Association").

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

Declaration

**ARTICLE I
NAME**

The name by which the Real Estate shall be known is "Somerset."

**ARTICLE II
DEFINITIONS**

The following terms, when used in this Declaration with initial capital letters, shall have the meanings set forth in this Article II:

2.1 "Agreement" means that certain Lot Purchase Agreement dated May, 2003, by and between Developer and Builder, as the same may be amended, modified, supplemented or restated from time to time by the parties thereto.

2.2 "Applicable Date" means the date that is twenty (20) years from the date this Declaration is recorded in the office of the Recorder of Hamilton County, Indiana.

2.3 "Somerset" means the Development.

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

2.5 "Board" means the Board of Directors of the Association.

2.6 "Builder" means Drees Premier Homes, Inc., its successors and assigns.

2.7 "Committee" means the Somerset Architectural Review Committee.

2.8 "Common Property" means (i) all areas designated on any Plat of all or any part of the Real Estate as "Common Property," (ii) all portions of the Real Estate shown on any Plat of all or any part of the Real Estate which are not Lots and which are not dedicated to the public, and (iii) all facilities and personal property owned or leased by the Association for the benefit, use, and enjoyment of the Owners from time to time.

2.9 "Developer" means Somerset Residential Development, LLC, its heirs, successors, and assigns, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

2.10 "Development" means all Neighborhoods, or sections of the recorded Plat for Somerset, a subdivision in Hamilton County, Indiana, and consisting of all the real estate from time to time made subject to the provisions of this Declaration.

2.11 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (a) the first date on which neither Builder nor Developer owns any Lot within or upon the Real Estate, or (b) the date which is three (3) years after the date on which all improvements and installations required for the Development have been completed and, if applicable, accepted for public maintenance by all appropriate governmental units or agencies.

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

2.13 "Dwelling" means the single-family residence constructed upon a Lot.

2.14 "Guidelines" means the architectural and ecological guidelines, standards, rules and regulations established by the Committee from time to time.

2.15 "Landscape Maintenance Access Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Landscape Maintenance Access

Easements, either separately or in combination with any other easement designated on such Plat.

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

2.17 "Mortgage" shall mean a recorded mortgage on any Lot.

2.18 "Mortgagee" means the holder of a Mortgage.

2.19 "Neighborhood" means a group of Lots, together with adjacent streets and Common Property, as delineated by Developer and designated as such on the Plat or other supplemental drawing or document, which Lots are subject to common development standards applicable only to such Neighborhood.

2.20 "Non-Access Easements" means those areas designated on any Plat of all or any part of the Real Estate as Non-Access Easements, either separately or in combination with any other easement designated on such Plat.

2.21 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

2.22 "Plat" means each subdivision plat of the Real Estate identified as a Final Plat for Somerset as previously or hereafter recorded in the office of the Recorder of Hamilton County, Indiana (as the same may be amended or supplemented from time to time).

2.23 "Real Estate" means that real property located in Hamilton County, Indiana more particularly described in **Exhibit A**.

2.24 "Sanitary Sewer Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Sanitary Sewer Easements, either separately or in combination with any other easement designated on such Plat.

2.25 "Sewer Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Sewer Easements, either separately or in combination with any other easement designated on such Plat.

2.26 "Standards" shall mean: (a) all covenants, conditions, restrictions and provisions of this Declaration; (b) all covenants, conditions, and restrictions enumerated or depicted on any Plat of all or any part of the Real Estate; and (c) all duly adopted Guidelines, rules, regulations, restrictions, decisions and resolutions of the Association, the Board or the Committee, or their respective representatives.

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

2.28 "Utility Access Easement" means that area designated on any Plat of all or any part of the Real Estate as a Utility Access Easement.

ARTICLE III APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate, shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration.

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

ARTICLE IV PROPERTY RIGHTS/COMMON PROPERTY

4.1 Owners' Easement of Enjoyment of Common Property. Developer hereby declares, creates, grants and reserves a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Property. Such easement shall run with and be appurtenant to each Lot, but shall extend to and be exercisable only by those individuals residing on such Lot, subject to the following:

- (a) The right of the Association (after conveyance of the Common Property to the Association) to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of Owners holding at least two-thirds (2/3) of the total voting power of the Association;
- (b) The rights of Developer and Builder as provided in this Declaration and in any Plat of all or any part of the Real Estate;
- (c) The terms and provisions of this Declaration and the Standards generally;
- (d) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate.

4.2 Rental of Dwellings. No Owner may lease his Dwelling to any person or entity except pursuant to a written lease for a term of not less than twelve (12) months that

includes the full names and addresses of both landlord and tenant, a copy of which lease is provided to the Association prior to the commencement date thereof.

4.3 Delegation of Use. Any Owner may delegate, in accordance with all applicable Standards and the by-laws of the Association, his right of enjoyment of the Common Property to his tenants or contract purchasers who reside in the Dwelling on such Owner's Lot. Any such delegation will terminate such Owner's right of enjoyment of the Common Property, but such Owner shall remain jointly and severally liable with the delegate for the violation of any Standard.

4.4 Conveyance and Maintenance of Common Property. Prior to the conveyance of the first Lot to an Owner, Developer shall convey all of its rights, title and interest in and to the Common Property to the Association. Such conveyance shall be by special warranty deed free and clear of all encumbrances (other than the lien of nondelinquent real estate taxes), and such Common Property shall then be the property of the Association. The Association shall thereafter be responsible for the maintenance and upkeep of the Common Property.

ARTICLE V EASEMENTS/LOT MAINTENANCE

5.1 Utility Easements. Developer hereby declares, creates, grants, and reserves the Utility Easements for the use of Developer and Builder during the Development Period and for the use of all public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. No permanent structures, except walks or driveways to the extent permitted by applicable law and approved in accordance with this Declaration, shall be erected or maintained upon the Utility Easements.

5.2 Drainage Easements. Developer hereby declares, creates, grants and reserves the Drainage Easements: (a) for the use of Developer and Builder during the Development Period for access to and installation, repair or removal of a surface drainage system (including retention and detention basins) for the Real Estate; and (b) for the use of the Association and any governmental agency having jurisdiction there over for access to and maintenance, repair or replacement of such drainage system. Each Owner of a Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that surface water drainage will be unimpeded. No temporary or permanent structures, except walks or driveways, to the extent permitted by applicable law and approved in accordance with this Declaration, shall be erected or maintained upon the Drainage Easements.

5.3 Landscape Maintenance Access Easements. Developer hereby declares, creates, grants and reserves the Landscape Maintenance Access Easements for the benefit of the Owners and the Association for purposes of maintaining and preserving the Common Property in accordance with the provisions of this Declaration.

5.4 Sanitary Sewer Easements. In addition to those other easements established in these Covenants, Conditions, and Restrictions hereof, the following provisions shall apply to easements granted to Hamilton Southeastern Utilities, Inc. ("HSE").

(a) All sanitary sewer and utility easements may be used for the construction, extension, operation, inspection, maintenance, reconstruction and removal of sanitary sewer facilities and provide HSE the right of ingress/egress.

(b) Pavement or concrete, including driveways and sidewalks, shall not be constructed on or within one (1) foot horizontal distance of any sanitary sewer castings.

(c) Owner shall not place or permit to be placed any trees or other deep rooted landscaping directly over or within a ten (10) foot horizontal distance of laterals or any other sanitary sewer facilities as measured from the lesser of the drip line of the mature planting to the center of sanitary sewer facilities or in accordance with the then current tree spacing policy of HSE. Any trees or landscaping placed within easements or right-of-ways are at risk of being damaged or removed by HSE without the obligation of replacement.

(d) No mounding, lighting, fencing, signs, retaining/landscaping/entrance walls, irrigation lines, etc. shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of the above listed items placed within easements or right-of-ways is at risk of being removed by utilities without the obligation of replacement.

(e) All owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair, and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.

(f) The discharge of clear water sources (foundation drains, sump pumps, roof drains, etc.) to the sanitary sewers is prohibited.

(g) Grade changes across sanitary sewer facilities must be approved in writing by HSE.

(h) All laterals constructed are private and are to be maintained by the Owner.

5.5 Utility Access Easement. Developer hereby declares, creates, grants and reserves the Utility Access Easement for the use of the utility companies, Builder, or Developer and all governmental agencies having appropriate jurisdiction for the purpose of ingress to and egress from the real estate more particularly illustrated on the secondary plat of record, attached to and made a part of this Declaration. No permanent or temporary structure shall be erected or maintained upon said Utility Access Easement, except that Developer, Builder, or the Association may erect a lockable gate across such easement if so desired.

5.6 Non-Access Easement. Developer hereby declares, creates, grants and reserves the Non-Access Easement in which no Owner or other party may erect, place or maintain any structure, improvement, or object of any sort, whether permanent or temporary, and through, over and under which no Owner or other party may pass to gain ingress to or egress from any portion of the Real Estate or for any other purpose except the maintenance of the Common Property, if any, situated thereon.

5.7 Other Easement Rights. Developer hereby declares, creates, grants, and reserves: (a) during the Development Period, a non-exclusive easement for the use of Developer and Builder over the Common Property for the construction, reconstruction, alteration and maintenance of all improvements to be located thereon; (b) a non-exclusive access and construction easement over that portion of the Real Estate outside the Common Property for the temporary occupation thereof by Developer and Builder in order to facilitate the exercise of any of the easement rights granted to Developer and Builder under this Declaration; and (c) a non-exclusive easement in favor of Developer, Builder, the Committee, and the Association over the Lot of any Owner who is in violation of any Standard for the purpose of correcting or effecting the correction of such violation as provided for herein.

5.8 Private Utility Lines. The Owner of each Lot shall be responsible for the maintenance, repair or replacement of utility distribution lines and connections, as well as private sanitary sewer laterals (which connect a Lot to a sewer main) on such Lot. On such Lot, the Owner shall also be responsible for the maintenance, repair or replacement of storm sewer lines, mains, drains and other storm sewer system components located on the Lot, except to the extent such items are located within a Sewer Easement, in which case such maintenance, repair and replacement shall be the Association's responsibility.

5.9 Relocation of Easements. Developer reserves the right to relocate any easement granted herein without notice to or the consent of any Owner(s); provided, however, that such relocation shall not materially diminish or unreasonably disrupt the essential function or resulting benefit of the easement being relocated with respect to any Lot.

ARTICLE VI

PROTECTIVE COVENANTS AND USE RESTRICTIONS

6.1 Residential Use and Occupancy Restrictions. Except as provided in Section 6.26 below, every Lot is reserved exclusively for residential purposes. No permanent or temporary building, structure or improvement of any kind may be erected, constructed, or placed thereon except a single-family residence (a "Dwelling") and such accessory buildings, structures, and/or improvements, if any, as are approved in accordance with Article IX of this Declaration. Except as may be erected by Builder in connection with the construction of a Dwelling or other improvements in the Development, outbuildings, sheds, storage barns, and other accessory buildings, structures, and improvements not specifically addressed in this Declaration are prohibited. There shall be no more than one (1) Dwelling per Lot and no Dwelling may be occupied until all prerequisites to occupancy set forth herein have been satisfied and an occupancy permit or similar permit or approval has been issued by the governmental body or agency with responsibility therefore.

6.2 Dwelling Size. No single-story Dwelling containing less than 1800 square feet of living space shall be erected, constructed, or placed on any Lot. No multi-story Dwelling containing less than 2000 square feet of living space shall be erected, constructed, or placed on any Lot. For purposes of this Section 6.2, "living space" means all enclosed floor space within a Dwelling, excluding floor space contained within any basement, cellar, crawl space, porch, terrace, garage, carport, or other area of such Dwelling that is not equipped and intended for regular and continuous human habitation.

6.3 Building Lines and Combined Lots. Front yard, side yard, and rear yard building lines are as established on the Plat. No permanent or temporary Dwelling, building, structure, or improvement shall be erected, constructed, or placed on any building line and/or between any building line and the corresponding parallel Lot line. In the case of contiguous Lots owned by a single Owner, such Lots may be used for a single Dwelling and considered to be a single Lot for building line purposes under this Declaration only with the written approval of the Committee. Owners desiring such approval must submit a written request to the Committee. In the event approval is granted, the affected Lots shall continue to be treated as a single Lot so long as each remains improved only with a single Dwelling.

6.4 Sidewalks. Each Lot must include sidewalks situated parallel to each Lot line that adjoins the right-of-way of any public or private street. Sidewalks shall be constructed and located in accordance with plans and specifications provided by the Committee. Except to the extent a temporary waiver is obtained from the Committee by the affected Owner, completion of all required sidewalks shall be a prerequisite to the occupancy of each Dwelling under this Declaration. Such temporary waiver may be requested only where inclement weather or other causes beyond the affected Owner's reasonable control result in the inability to complete the sidewalks prior to the Dwelling being fully ready for occupancy.

6.5 Construction, Completion, and Restoration of Dwellings. Except as approved by the Committee, every Dwelling, building, structure, and improvement to be constructed, erected, or placed on any Lot shall be built of new building materials and no pre-existing Dwelling, building, structure, or improvement may be relocated to or otherwise placed upon any Lot. The exterior construction of a Dwelling, building, structure or improvement shall be completed no later than twelve (12) months from the commencement of on-site construction activities related thereto. Restoration, replacement, or removal of any Dwelling, building, structure, or improvement partially or totally damaged or destroyed by fire or other casualty shall be commenced no more than ninety (90) days after the occurrence of such casualty and continuously and diligently prosecuted to completion thereafter. The Owner of the Lot upon which any Dwelling, building, structure or improvement partially or totally damaged or destroyed by fire or other casualty is or was located shall provide to the Association, no more than thirty (30) days from the date on which such casualty occurred, written notice of such Owner's intent to restore or remove such Dwelling, building, structure or improvement.

6.6 Garages and Driveways. Each Dwelling must include an attached multiple-car garage consistent in design, construction, and materials with such Dwelling, and a concrete or asphalt driveway connecting the garage entryway with the adjoining public or private street.

6.7 Exterior Construction. The exterior color and finish materials of every Dwelling, building, structure, and improvement on any Lot shall be as approved by the Committee. Aluminum siding is prohibited.

6.8 Landscaping. The front and side yards within a Lot must be sodded unless an in-ground irrigation system is installed, in which case hydroseeding is permitted. The rear yard within a Lot may be sodded or seeded. Minimum landscaping requirements shall apply to each Lot. Any trees provided by the Developer and/or Builder may not be removed unless dead and/or upon approval from the Committee. Within thirty (30) days following completion of a house on a lot, the Builder shall landscape the lot weather permitting.

6.9 Mailboxes. Each Dwelling must include a mailbox complying with the design, color, and placement standards established by the Committee from time to time.

6.10 Yard Lights. Each Dwelling shall include an outdoor dusk-to-dawn light located in the front yard of the Lot on which such Dwelling is located. Each Lot Owner shall keep the light located on such Owner's Lot in good and operable condition and repair at all times. Notwithstanding this requirement, no exterior lighting shall be directed outside the boundaries of any Lot, nor shall any lighting be used which constitutes more than normal convenience lighting or lighting required under this Declaration Section.

6.11 Fences. For purposes of this Declaration, a fence is defined as that which is installed in proximity of the Lot boundary lines for the purposes of enclosing the majority of the rear portion of the lot. The only type of fence that will be approved by the Committee will be a 48" or 72" "wrought iron" type fence similar to that surrounding the Somerset Community Pool area. Shadow box, stockade-type, and privacy fences will not be permitted. No part of any fence may extend forward on the affected Lot beyond the primary rear wall of the Dwelling, cross any building line, or be located in a manner that impedes or restricts drainage of any Lot.

6.12 Gardens. Vegetable, wild flower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size.

6.13 Swimming Pools. All swimming or wading pools, other than professionally constructed, permanent, in-ground pools, are prohibited. No swimming pool of any type shall be permitted on any Lot except as approved by the Committee. Notwithstanding the foregoing, temporary wading pools measuring no more than six feet (6') in diameter are permitted without Committee approval. Such temporary wading pools must be drained and stored indoors on a nightly basis.

6.14 Trash Collection. Trash collection services for the Development shall be provided only by an entity selected and designated by the Association. Trash may be placed at the curb of each Lot no earlier than 8:00 pm the night before scheduled collection, and trash receptacles shall not be permitted to remain outside for more than twenty-four (24) consecutive hours.

6.15 Prohibited Items and Activities. Trampolines, clotheslines, wells providing water for human or household consumption, septic tanks and systems, and electronic insect

eradication devices ("zappers") are prohibited. No trash or glass clippings may be disposed of on any empty Lot in the Development.

6.16 Basketball Goals. Basketball goals are permitted subject to approval by the Committee. Goals with black posts and glass or white/translucent fiberglass backboards may be considered for approval. No basketball goal positioned in a manner likely to result in the use of an adjoining public or private street in connection with the use of such goal may be approved.

6.17 Playground Equipment. Playsets and other recreational equipment or items must be approved by the Committee. All approved playsets must be located behind the Dwelling in the rear yard of the affected Lot and must be constructed primarily of wood. No playset may exceed twelve feet (12') in height. All playsets shall be kept in good condition and repair, and shall be stained and/or painted as reasonably necessary as determined by the Committee.

6.18 Flag Poles. Flagpoles must be approved by the Committee. No flagpoles shall exceed twenty feet (20') in height. Flags exceeding thirty (30) square feet are prohibited. No more than two (2) flags may be flown from a single flagpole at any time. Only one (1) flagpole will be allowed on each respective Lot.

6.19 Exterior Antennae. No antenna or satellite dish may be erected on any Dwelling or Lot without Committee approval. Approved satellite dishes must be no more than twenty-four inches (24") in diameter and must be mounted in an inconspicuous location as approved by the Committee. Only one (1) satellite dish will be approved for each lot.

6.20 Parking. Overnight parking on any public or private street in the Development is prohibited. Temporary parking of automobiles, SUVs, pickup trucks, and motorcycles is permitted only when the Owner of such Lot hosts a social function for which available driveway space is insufficient to accommodate all guests. Other types of vehicles may not be parked in open public view in the Development.

6.21 Additional Restrictions and Building Standards. Lots and Dwellings shall be constructed and maintained in compliance with, and Owners shall abide by, all additional rules and restrictions, as well as all construction material specifications and similar standards, adopted by the Committee from time to time.

6.22 Subdivision of Lots. No Lot shall hereafter be subdivided into parcels for additional residential purposes, except as approved by the Committee.

6.23 Motor Vehicle Repair. The repair or storage of inoperative motor vehicles or the material alteration of motor vehicles shall not be permitted on any Lot, unless entirely within a garage permitted to be constructed under this Declaration.

6.24 Noxious or Offensive Activities. No noxious, unlawful or otherwise disruptive or offensive activity shall be carried on upon any Lot; nor shall anything be done thereon which may become an annoyance or nuisance to other Owners and/or their guests.

6.25 Lot and Dwelling Maintenance. Each Owner shall keep his Lot(s) and the Dwelling thereon in a good and well-maintained condition, free and clear of rubbish and trash and in good repair. Lot Owners shall keep their Lots reasonably clear from unsightly weeds and growth at all times. Lawns shall be groomed, well maintained, and regularly cut. Grass shall not be permitted to exceed six inches (6") in height.

6.26 Business Activity. No business shall be conducted on any Lot, other than the home occupations permitted in the Town of Fishers Zoning Ordinance. Notwithstanding the above, and to the extent such a limitation is consistent with applicable law, no school, preschool, day-care facility, church or similar institution of any kind shall be maintained, conducted or operated upon any Lot.

6.27 Animals. No animals, livestock or poultry shall be raised, bred or kept on any Lot except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and that no more than two (2) outdoor pets (excluding fish) are kept on a given Lot in the aggregate. The demeanor of any animal kept outside must be such as to not to create a problem. This determination shall be made by the Committee. Any dog or cat beyond the confines of the Lot must be attended to and be on a leash no longer than six feet (6') in length. Solid waste material must be picked up immediately if outside the confines of the owner's Lot.

6.28 Compliance with Drainage Requirements. Each Owner of a Lot shall comply at all times with the provisions of any drainage plan as approved for the Development of all or any part of the Real Estate. It shall be the duty of every lot owner to keep open storm drainage ditches and/or swales unobstructed and in good maintenance and repair. Water must be discharged into the under drains provided on each Lot from sump pumps, geo-thermal systems or other forced water discharges. Under no circumstances shall the above-mentioned water sources be allowed to discharge above ground into the street or adjacent lots nor is Owner allowed to modify any drainage ditch or swale.

6.29 Signs. No signs of any type may be erected, posted or displayed on any Lot except street identification signs erected by the Builder, the Developer, or the Association and except one (1) temporary sign no more than six (6) square feet in area advertising the Lot upon which such sign is located for sale or rent. This restriction shall not apply to Builder who may erect such signs as are authorized by the Developer.

6.30 Automobiles, Recreational Vehicles, Boats, Travel Trailers. No recreational vehicle, mobile home, boat, personal watercraft, snowmobile, travel trailer or similar vehicle or equipment shall be parked or stored on any Lot for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in the garage and completely out of view. Commercial vehicles and trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view.

6.31 Garage and Yard Sales; Holiday Lights. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period. Christmas lights and other holiday or occasion-themed decorations may be erected no sooner than five (5) weeks prior to, and removed no later than two (2) weeks after, such holiday or occasion.

6.32 Lakes. All lakes, ponds and streams within the Development, if any, shall be aesthetic amenities only and no other use thereof, including without limitation, swimming, boating, fishing, playing or use of personal flotation devices shall be permitted except in accordance with all applicable Standards. Neither Developer, Builder nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, ponds or streams within the Development.

6.33 Trash. No burning of any trash and no accumulation or storage of litter, new or used building materials or refuse of any kind shall be permitted on any Lot. This provision shall not apply to any Lots owned by Builder and held for sale.

ARTICLE VII **ASSOCIATION**

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

7.2 Classes of Membership. The Association shall have two (2) classes of voting membership:

(a) Class A Members. Class A Members shall be all Owners, except the Developer (if the Class B membership exists) and the Builder. Class A members shall be entitled to one (1) vote for each Lot owned but shall have no vote until Class B membership ceases to exist.

(b) Class B Members. The Class B member shall be the Developer. The Class B membership shall automatically cease to exist as such and shall be converted to Class A membership upon the occurrence of the earliest of the following:

(i) The sale of eighty-five percent (85%) of the Lots to individual Owners (other than Builder); or

(ii) The Applicable Date.

7.3 Co-Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In the absence of such a determination, the vote in respect of such Lot may not be cast. In no event shall more than one (1) vote be cast with respect to such Lot.

7.4 Board of Directors. The Board shall manage the affairs of the Association.

7.5 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to: (a) the administration and enforcement of the covenants,

conditions and restrictions contained in this Declaration; (b) the maintenance and upkeep of the Common Property and the establishment and enforcement, from time to time, of rules and regulations governing the use thereof; (c) the payment of all assessments and charges against the Common Property, if any; and (d) maintaining the policy or policies of insurance required to be maintained by the Association by this Declaration. The Association may fulfill any or all of its responsibilities under this Declaration by contracting with a professional management company upon such terms and conditions as may be agreed upon between the Board and such management company; provided, however, that no such agreement shall be for a term longer than twelve (12) months.

7.6 Correction of Violations. In the event of an Owner's breach of any Standard, the Association may impose such fines, penalties, or other sanctions as it may determine to be reasonable and appropriate in its sole discretion and may pursue any and all other remedies provided under this Declaration or otherwise available at law or in equity. In addition, upon reasonable notice to the affected Owner and acting pursuant to a duly adopted resolution of the Board, Developer, Builder, or the Association may enter upon a Lot in order to correct, or direct an Owner to correct, a violation or breach of any Standard. Any costs or expenses incurred by the Association, Developer or Builder in correcting or attempting to correct a violation or breach under this Section 7.6 (including court costs, legal expenses, and reasonable attorneys' fees), as well as any unpaid fines imposed under this Section, shall be a charge against the affected Lot and a personal obligation of such Owner. The Association shall have a lien against said Lot for such costs, expenses, and amounts, together with all costs of collection. Such lien shall be subordinate to any Mortgage and other liens made superior by applicable law and may be imposed and foreclosed against the Lot in the manner that mechanics' liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this Section shall be perfected upon the filing in the office of the Recorder of Hamilton County, Indiana, at any time after the date payment is due, a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

7.7 Compensation. No director of the Association shall receive compensation for his services as director.

7.8 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct, bad faith or gross negligence.

7.9 Owner Disputes. In addition to the responsibilities set forth in Section 7.5 above, the Board shall, upon the receipt of a detailed written complaint from an Owner summarizing a dispute between such Owner and any other Owner(s) regarding the application of this Declaration or any rule or regulation promulgated hereunder, conduct a hearing to resolve such dispute. Such hearing shall be held no later than thirty (30) days after the Board's receipt of the complaint upon no fewer than five (5) days' written notice to the affected Owners. The Board shall serve as arbitrator at the hearing, shall entertain and review such evidence and arguments as it deems appropriate, and shall issue a written decision to the affected Owners no more than thirty (30) days after the hearing is concluded. No Owner involved in such dispute

shall institute legal action regarding that dispute until the arbitration provided for in this Section has been completed or all affected Owners have waived this requirement for arbitration.

ARTICLE VIII **ASSESSMENTS**

8.1 Covenant for Assessments. Each Owner of any Lot (excluding Developer and Builder), by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments, and (b) special assessments for the purposes herein provided, such annual and special assessments to be established and collected as hereinafter provided. The annual and special assessments, together with costs of collection and reasonable attorneys' fees and interest from the date such assessments are due at the rate of twelve percent (12%) per annum, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessments are made. Each such assessment, together with costs of collection and reasonable attorneys' fees and interest from the date such assessment is due at the rate of twelve percent (12%) per annum, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

8.2 Initiation and Capital Fund Assessment. Upon the initial conveyance of a Lot by the Developer or Builder to an Owner, the Owner shall pay an initial assessment of \$450.

8.3 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively: (a) for the maintenance and upkeep of the Common Property; (b) to pay the premiums for the insurance required to be maintained by the Association by this Declaration; (c) to promote the health, safety and welfare of the Owners and residents occupying the Lots; (d) to pay all assessments and charges against the Common Property; and (e) for the effective management and operation, and the performance of the responsibilities and duties, of the Association. A portion of the annual assessments may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any buildings, structures or other amenities that are part of the Common Property.

8.4 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Builder), the maximum annual assessment shall be \$500 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Builder), the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum annual assessment for the previous year without a vote of the membership of the Association.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Builder), the maximum annual assessment may be increased by more than fifteen percent (15%) above

the maximum annual assessment for the previous year only by a vote of two-thirds (2/3) of the total voting power of the Association at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum annual assessment.

8.5 Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of collecting or reimbursing in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Property, or to recover or offset an operating deficit incurred by the Association, provided that any such special assessment shall have the assent of two-thirds (2/3) of the total voting power of the Association at a meeting duly called for this purpose.

8.6 Special Assessments for Breaches of Standards. In addition to the corrective actions and remedies provided for in Section 7.6 above, the Association may establish and levy a special assessment on a Lot to secure the personal liability of the Owner of that Lot for costs and expenses incurred by the Association or the Committee in correcting or attempting to correct such Owner's breach of any Standard.

8.7 Notice and Quorum for Any Action Authorized Under Sections 8.4 and 8.5. Written notice of any meeting of the members of the Association called for the purpose of taking any action requiring a vote of the members of the Association under Sections 8.4 or 8.5 shall be sent to all members of the Association not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to sixty percent (60%) of the total voting power of the Association 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 the subsequent meeting shall be one-half (1/2) of the total voting power represented at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.8 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

8.9 Date of Commencement of Annual Assessments; Due Dates. The annual assessment or prorated portion thereof for each Lot Owner of the Development shall commence on the day of the conveyance of the Lot from Developer or Builder to an Owner (other than the Builder). The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the commencement of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date(s) shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

8.10 Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, together with costs of collection and reasonable attorneys' fees, to recover a money judgment and such amounts may be further enforced by imposition of a lien and foreclosure of such lien against such Owner's Lot in the manner that mechanics' liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this Section shall be perfected upon the filing in the office of the Recorder of Hamilton County, Indiana, at any time after the date payment is due, a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

8.11 Subordination of the Lien to Mortgages.

The lien of the assessments provided for in Section 8.10 shall be subordinate to the lien of any Mortgage on the Lot. Sale or transfer of any Lot shall not affect the lien of the assessments provided for in Section 8.1. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof with respect to a Mortgage, shall extinguish the lien of the assessments provided for in Section 8.1 as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

8.12 Exemption from Assessments; Developer's Subsidy.

Notwithstanding the provisions of this Article and the Declaration to the contrary, Lots owned by Developer and Builder shall not be subject to assessments. Developer shall, however, provide to the Association such funds as are necessary (as reasonably determined by the Board) for the Association to carry out its responsibilities under this Declaration in the event receipts from annual and special assessments imposed are insufficient for that purpose. This subsidy obligation shall continue until the earlier of (a) the sale of eight-five (85%) of the Lots to Owners (other than Builder), or (b) the termination of, or completion of Builder's purchase obligation under, the Agreement (other than as a result of Builder's default there under). If Developer's subsidy obligation is terminated, for any reason, Builder shall assume such subsidy obligation until the sale of eighty-five percent (85%) of the Lots to Owner (other than Builder).

ARTICLE IX

SOMERSET ARCHITECTURAL REVIEW COMMITTEE

9.1 Creation.

There shall be and hereby is, created and established the Somerset Architectural Review Committee (the "Committee"). The Committee shall perform the functions provided for herein. Until the earlier of the elimination of Class B membership or the Applicable Date, the Committee shall consist of up to five (5) members appointed, from time to time, by Class B Member. Such members shall be subject to removal by Class B Member at any time with or without cause. After the earlier of the elimination of Class B membership or the Applicable Date, the Committee shall be a standing committee of the Association, consisting of up to five (5) persons appointed, from time to time, by the Board.

9.2 Purposes and Powers of the Committee.

The Committee shall regulate (a) the external design, construction, appearance and location of the Dwellings, buildings, structures, and improvements on the Lots; and (b) the removal or addition of any tree,

vegetation or landscaping feature or element, from or to any Lot. The Committee shall promulgate, and shall subsequently have the right to modify, supplement, amend, and repeal at any time from time to time, architectural and ecological guidelines, standards, rules and regulations (collectively, the "Guidelines") for the review, approval, and completion of the items and actions referred to in this Section. The Guidelines shall include, but shall not be limited to, standards for landscaping, fences, and mailboxes. The Guidelines may set forth requirements in addition to those set forth in the Declaration or any Plat as long as such Guidelines are not inconsistent therewith. The Guidelines shall be binding on all Owners.

9.3 Approval Procedures and Standards. No Dwelling, building, fence, invisible fence, wall, or other permanent or temporary structure, or improvement of any kind shall be constructed, erected, placed or maintained on any Lot, nor shall any exterior change (including changes in the exterior color and/or material of a Dwelling or other improvement) or alteration of such Lot or a Dwelling or improvement thereon (including material changes in landscaping elements or features) be made without the prior written approval of the Committee. Such approval shall be obtained based upon a written application made to the Committee by the Owner of the affected Lot requesting authorization for such Owner's intended addition or change to his Lot from the Committee. Such written application shall be in the form prescribed from time to time by the Committee, and may include, as required by the Committee, any or all of the following: a proposed site plan; a proposed landscaping plan; architectural plans, including floor plans, cross sections, and elevations; material specifications and samples; and certifications of conformance with applicable building, zoning and similar codes. The Committee shall approve or disapprove in writing any application submitted to it within thirty (30) days of such submission. Written disapproval shall specify the reason(s) for such disapproval, which may include:

- (a) an inadequate or incomplete application;
- (b) an application proposing an improvement or change that, if completed or made on the Lot, would: (i) result in the violation of a duly adopted Standard, or (ii) be aesthetically or otherwise inconsistent with or detrimental to the character, utility, function, or value of the Development as a whole or the affected Neighborhood therein; or
- (c) an application proposing an improvement or change that would be dangerous, potentially damaging, or otherwise detrimental to the health, safety and welfare of any Owner or other person or property in the Development.

9.4 Enforcement. The Committee shall have the right to enforce this Article and impose fines for the violation thereof as provided for in Section 14.1 of this Declaration, any organizational document of the Association or any statute, law, rule or regulation. The Committee may, in its sole and exclusive discretion, refer such violations to the Board for enforcement under Section 7.6.

9.5 Committee Liability. The approval of plans and related application materials by the Committee shall not constitute a representation or warranty as to the legal or technical adequacy, completeness, or quality of such plans and materials, and neither the Committee nor the Association nor any member thereof shall be in any manner liable or

responsible for defects or omissions in those plans or materials, any aspect of work performed there under, or alleged damages or losses connected with the Committee's approval or disapproval of any matter.

9.6 Fees. The Committee may charge a reasonable fee for the processing and review of plans and related application materials.

ARTICLE X **MORTGAGES**

10.1 Notice to Association. Any Mortgagee who places a Mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such Mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the by-laws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the by-laws of the Association or otherwise shall be required.

10.2 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying defaults known to the Association, if any, of the Owner of the corresponding Lot in the performance of such Owner's obligations under this Declaration or any other applicable documents.

ARTICLE XI **AMENDMENT**

11.1 Amendment by Association. Except as otherwise provided in this Declaration or by applicable statute, amendments to this Declaration shall be proposed and adopted in the following manner:

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

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board or Owners having in the aggregate at least a majority of the total voting power of the Association.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the by-laws of the Association.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) of the total voting power of the Association; provided, however, that any such amendment shall require the

prior written approval of Developer so long as Developer or Builder owns any Lot. In the event any Lot is subject to a Mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its Mortgage interest to the Board in accordance with the provisions of the foregoing Section 10.1.

11.2 Recording. Each amendment to the Declaration made pursuant to Section 11.1 above shall be executed by the President or Vice President and Secretary of the Association. All amendments shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and no amendment shall become effective until so recorded.

11.3 Amendment by Developer. Developer, may, subject any additional real estate to the provisions of this Declaration by the execution and recording of a supplement hereto. Such annexation shall not require the consent of the Owners or the Association. Notwithstanding the foregoing, Developer is not obligated to subject any additional real estate to this Declaration. Any annexation made under this Subsection 11.3 shall be evidenced by filing a supplement to this Declaration, which shall be recorded in the Office of the Recorder of Hamilton County, Indiana. Such a supplement to this Declaration may contain such additional covenants, conditions, restrictions, easements and liens as Developer shall deem appropriate to impose upon the additional real estate being annexed,. Annexed additional real estate shall enjoy the benefit of all Common Property in the Development.

ARTICLE XII **INSURANCE**

12.1 Liability Insurance. The Association shall maintain at all times a policy or policies of comprehensive general liability insurance insuring the Association, the Board, Developer, Builder, and the Owners against liability for personal injury or property damage occurring in or about, or arising in connection with, the Common Property or any other areas of the Property maintained by the Association, or the acts or omissions of the Association. Such insurance shall be in such coverage amounts as the Board may determine, in its sole discretion, are appropriate from time to time.

12.2 Other Insurance. The Association may maintain officers' and directors' liability insurance and such insurance or extended coverage insurance insuring the Common Property in such amounts, against such perils, for such time periods and under such circumstances as the Board determines, in its sole discretion, are appropriate and in the best interest of the Development.

12.3 Insurance Proceeds. Any and all insurance proceeds received by the Association shall be held by the Association and used for the benefit of the Owners, the Common Property and the Lots, as the Board shall, from time to time, determine. No Owner shall have any right in or to the proceeds of any such insurance.

12.4 Casualty. If any portion of the Common Property is damaged or destroyed, the Association shall restore the affected portion of the Common Property to substantially the same condition as existed immediately prior to such damage or destruction to the extent reasonably practicable. If such damage or destruction is not covered by insurance

maintained by the Association, or the proceeds are insufficient to fully restore the affected portion of the Common Property as a result thereof, then the Association shall effect the restoration thereof in such a manner as the Association may determine appropriate in its sole judgment and shall levy a special assessment against each Owner for any deficiency in proportion to his respective share thereof.

ARTICLE XIII REAL ESTATE TAXES AND ASSESSMENTS

13.1 Real Estate Taxes. Each Owner shall be responsible for and pay all taxes and assessments, general and special, levied or imposed upon his respective Lot and its improvements. The Association shall be responsible for and pay all real estate taxes and assessment levied against the Common Property.

13.2 Allocation. Prior to the time the Auditor of Hamilton County, Indiana, or any other applicable taxing authority, establishes separate tax parcels for each Lot, Developer (or, if the Class B membership no longer exists, Builder) shall allocate the real estate taxes and assessments upon the Real Estate among and against the Lots and against the remainder of the Real Estate in a fair and equitable manner as determined by Developer in its sole discretion. The allocation made in accordance with the terms hereof shall be binding upon all Owners.

ARTICLE XIV GENERAL PROVISIONS

14.1 Right of Enforcement. Each Owner, tenant, or occupant of a Lot shall comply with all Standards. Violation or threatened violation of any Standard shall be grounds for an action by Developer, Builder, the Association, the Committee, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such Standard. Available relief in any such action shall include: recovery of damages or other sums due for such violation; injunctive relief against any such violation or threatened violation; declaratory relief and the recovery of costs and reasonable attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor Builder nor the Association nor the Committee shall be liable for damages of any kind to any person for failing to enforce or carry out any such Standards.

14.2 Government Enforcement. Neither the Town of Fishers Planning Commission, nor any other political subdivision or agency, nor any of their respective successors and assigns, shall have the right, power or authority to enforce any Standard other than those covenants, conditions, restrictions or limitations, if any, that expressly run in favor of such entities.

14.3 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any Standard shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to it or him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

14.4 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein

provided) shall run with the land and shall be binding on all parties, entities and persons from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until the Applicable Date, and thereafter shall be automatically be extended for successive periods of ten (10) years each, unless, prior to the commencement of any such extension period, by vote of the majority of the total voting power of the Association, it is agreed that this Declaration shall be terminated in its entirety; provided, however, that no termination of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

14.5 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

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

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

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

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

DEVELOPER:


Somerset Residential Development, LLC

By: Joseph L. Gradison, Member

STATE OF INDIANA)
COUNTY OF Marion) SS:

Joseph H. Gradison Before me, a Notary Public in and for the State of Indiana, personally appeared who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Somerset.

WITNESS my hand and Notarial Seal this 13 day of Feb, 2004.

Katharine E Wagner
Notary Public

Katharine E Wagner
Printed Name

My Commission Expires:

12/29/10

I am a resident of Hamilton
County, Indiana.

EXHIBIT A

"REAL ESTATE"

LEGAL DESCRIPTION

Part of the East Half of the Northeast Quarter of Section 33, Township 18 North, Range 5 East in Fall Creek Township, Hamilton County, Indiana, being more particularly described as follows:

BEGINNING at the Northeast corner of the Northeast Quarter of Section 33, Township 18 North, Range 5 East; thence South 89 degrees 15 minutes 04 seconds West (assumed bearing) on and along the North line of said Northeast Quarter 1025.82 feet; thence South 00 degrees 07 minutes 27 seconds West 429.00 feet; thence South 87 degrees 07 minutes 02 seconds East 68.52 feet; thence South 01 degrees 17 minutes 04 seconds East 260.95 feet; thence South 87 degrees 17 minutes 35 seconds West 368.56 feet to a point on the West line of the East Half of said Northeast Quarter, said point being located 706.87 feet South 00 degrees 03 minutes 22 seconds East of the Northwest corner of said East Half; thence South 00 degrees 03 minutes 22 seconds East on and along the West line of the East Half of said Northeast Quarter 1944.90 feet to the Southwest corner of the East Half of said Northeast Quarter; thence North 89 degrees 08 minutes 28 seconds East on and along the South line of the East Half of said Northeast Quarter 1320.19 feet to the Southeast corner of the Northeast Quarter of said Section 33; thence North 00 degrees 01 minutes 50 seconds West on and along the East line of said Northeast Quarter 2649.25 feet to the point of beginning, containing 75.180 acres, more or less.

Subject to the right of way for 126th Street.

Subject to all other legal easements and rights of way.