

TOWN OF ST. JOHN, LAKE COUNTY, INDIANA

ORDINANCE NO. 1786

AN ORDINANCE CONCERNING AMENDMENT TO THE ORDINANCE NO. 1483, AS AMENDED, THE SAME BEING AN ORDINANCE CLASSIFYING, REGULATING AND RESTRICTING THE LOCATION, HEIGHTS, AREA, BULK AND USE OF BUILDINGS AND STRUCTURES AND THE USE OF LAND IN THE TOWN OF ST. JOHN, AND DIVIDING THE TOWN INTO DISTRICTS, FOR THE PURPOSE OF APPROVING A CHANGE IN THE ZONING DISTRICT AND A PUD DEVELOPMENT PLAN

This is a Planned Unit Development District Ordinance, as defined by Ind. Code §36-7-41503, to amend the Zoning Ordinance of the Town of St. John, Lake County, Indiana, enacted by the Town Council of the Town of St. John, Lake County, Indiana, pursuant to its authority under the laws of the State of Indiana, Ind. Code § 36-7-4 et seq., as amended.

WHEREAS, the Town of St. John, Lake County, Indiana (the “Town”) has adopted Ordinance No. 1483, which Ordinance establishing the comprehensive zoning regulations for the Town (the “Zoning Ordinance”); and

WHEREAS, Olthof Homes, LLC, an Indiana limited liability company, as the owner of the parcel of land hereinafter described in attached Exhibit A (the “Real Estate”) did submit a PUD Development Plan and Application for Change of Zone District Classification (Application No. 2022-06) to the Plan Commission of the Town of St. John, Lake County, Indiana, (the “Plan Commission”) for the rezoning of such parcel from R-1 (Single-Family Residential) District to RC-2 PUD (Residential Conservation PUD) District, for a development to be known as Streamside Estates Planned Unit Development; and

WHEREAS, the Plan Commission considered said PUD Development Plan and Application for Change of Zone District Classification and did on the 7th day of September, 2022, hold a public hearing pursuant to notice as prescribed by Ind. Code §36-7-4-1505 on such application and other matters pertaining thereto; and

WHEREAS, the Plan Commission has: (1) reviewed the PUD Development Plan, a copy of which is attached hereto, made a part hereof, and marked as Exhibit B; (2) made special Findings of Fact as required by Chapter 9 of the St. John Zoning Ordinance, a copy of which is attached hereto, made a part hereof, and marked as Exhibit C; and (3) certified a favorable recommendation to the Town Council of the Town of St. John that said PUD Development Plan be approved and the application for rezoning be granted, subject to those conditions and restrictions set forth in said Findings of Fact and the PUD Development Plan; and

WHEREAS, the Plan Commission of the Town of St. John, Lake County, Indiana, in accordance with Indiana Code §36-7-4-608, as required by Indiana Code §36-7-4-1505, has favorably recommended that Town Ordinance No. 1483, as amended, be further amended and modified to change the zone maps and rezone the Real Estate from R-1 (Single-Family Residential) District to RC-2 PUD (Residential Conservation PUD) District; and

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of St. John, Lake County, Indiana, as follows:

Section 1. Applicability of Ordinance.

1.1 The Zoning Ordinance and Zoning Map are hereby changed to designate the Real Estate as a Planned Unit Development District to be known as the "Streamside Estates PUD District" (the "District").

1.2 Development of the Real Estate shall be governed by (i) the provisions of this Ordinance and its exhibits, including but not limited to the PUD Development Plan, and (ii) the provisions of the Zoning Ordinance, as amended, as made applicable to a Planned Unit Development District, except as modified, revised, supplemented or expressly made inapplicable by this Ordinance.

1.3 Chapter ("Chapter") and Article ("Article") cross-references of this Ordinance shall hereafter refer to the section as specified and referenced in the Zoning Ordinance.

1.4 All provisions and representations of the Zoning Ordinance that conflict with the provisions of this Ordinance are hereby made inapplicable to the Real Estate and shall be superseded by the terms of this Ordinance.

Section 2. Definitions. Capitalized terms not otherwise defined in this Ordinance shall have the meanings ascribed to them in the Zoning Ordinance.

2.1 **Dominant Exterior Material.** The Exterior Material that occupies not less than thirty percent (30%) the surface area of a Front Building Facade, exclusive of doors, windows and garage doors, unless as otherwise provided in the PUD Development Plan. The Dominant Exterior Material shall be identified on the elevations filed as part of an application for an improvement location permit.

2.2 **Exterior Material.** The separate architectural siding materials and patterns on a Front Building Facade such as Masonry Materials, horizontal siding, shake siding, vertical siding, and board & batten siding (each of the foregoing are examples of separate Exterior Materials).

Section 3. PUD Development Plan. The PUD Development Plan, attached hereto as Exhibit B, is hereby incorporated in accordance with Chapter 9 of the Zoning Ordinance. The Real Estate shall be developed in substantial compliance with the PUD Development Plan.

Section 4. Permitted Uses. The residential uses allowed in accordance with Chapter 9 of the Zoning Ordinance, and as set forth in the PUD Development Plan, shall be permitted.

Section 5. General Regulations. The standards of Chapter 9 of the Zoning Ordinance shall apply to the development of the District, except as otherwise modified by the PUD Development Plan.

Section 6. Development Standards. The standards of Chapter 9, Section D of the Zoning Ordinance, entitled “Residential Standards,” shall apply to the development of the District, except as otherwise modified by the PUD Development Plan.

Section 7. Design and Architectural Standards. The design and architectural standards set forth in the PUD Development Plan, as set forth in attached Exhibit B, shall apply to the development of the District.

Section 8. Landscaping Standards. The Landscaping Requirements and Standards set forth in Chapter 13 of the Zoning Ordinance shall apply, except as otherwise modified by the PUD Development Plan.

Section 9. Infrastructure Standards. The PUD District's infrastructure shall comply with the Zoning Ordinance and the Town’s Subdivision Control Ordinance, unless otherwise approved by the Plan Commission or Department of Public Works in consideration of the preservation of the natural topography and environment and inconsideration to the unique design intent of the District.




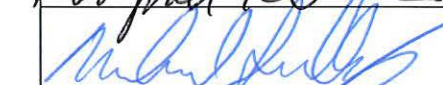
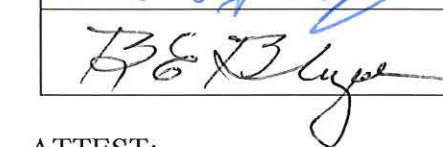
Section 10. Lighting Standards. The lighting standards set forth in Chapter 14 of the Zoning Ordinance shall apply to the development of the PUD District, except as otherwise modified by the PUD Development Plan.

ALL OF WHICH IS ORDAINED by the Town Council of the Town of St. John,
Indiana, this 22 day of November, 2022.

TOWN COUNCIL OF THE TOWN OF ST. JOHN, LAKE COUNTY, INDIANA

AYE

NAY

	Gerald Swets, President	
	Michael Aurelio, Vice President	
	Wayne Pondinas, Member	
	Michael Schilling, Member	
	Bryan Blazak, Member	

ATTEST:

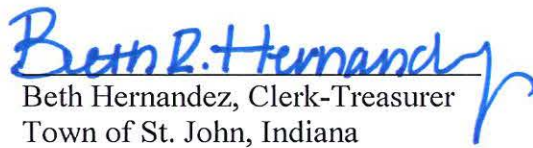

Beth Hernandez, Clerk-Treasurer
Town of St. John, Indiana

EXHIBIT A

THE EAST HALF OF THE NORTHEAST QUARTER, EXCEPT THE SOUTH 1265.15 FEET AND EXCEPT THE NORTH 380 FEET OF THE EAST 450 FEET AND EXCEPT THE SOUTH 140 FEET OF THE NORTH 520 FEET OF THE EAST 311.14 FEET OF SECTION 7, TOWNSHIP 34 NORTH, RANGE 9 WEST OF THE 2ND P.M., IN LAKE COUNTY, IN.

EXHIBIT B
TOWN OF ST. JOHN
DEVELOPMENT PLAN FOR STREAMSIDE

I. STATEMENT OF PURPOSE & INTENT

Streamside is located in St. John, Indiana at the Southwest Corner of 109th Avenue and White Oak Avenue. The property is approximately 36.96 acres and includes several acres of wetlands and natural areas that constitute about 14% of the acreage. The Streamside RC-2 PUD is an upscale residential community consisting of single-family residential homes, parks, natural areas and trails.

II. AUTHORITY/DEFINITIONS

Authority. The standards in this Development Plan will apply to all property contained within the Streamside Planned Unit Development. The Development Plan will become the governing standards for review, approval and modification of development activities occurring on the property. The subdivision and authority and zoning ordinances and regulations for the Town of St. John will apply where the provisions of this guide do not address a specific subject.

Definitions.

1. "HOA" – Homeowner's Association
2. "Planned Unit Development (PUD)" - This RC-2 Planned Unit Development provides a maximum degree of flexibility to accommodate Single Family Residential as shown on the drawing attached to the PDR Ordinance.
3. "Single Family Residential" - Single Family Residential is a single family detached dwelling.

III. GENERAL LOCATION, LAND USE, AND LEGAL DESCRIPTION

Location and Surrounding Land Uses. The proposed community is approximately 36.96 acres and is located south of 109th Avenue and west of White Oak Avenue. The property is presently undeveloped.

Access. Primary access to the development will be through the entrance on White Oak Avenue as well as an existing connection to the Summerlin community to the west.

Legal Description. See legal description attached hereto as Exhibit "A".

IV. PLANNED UNIT DEVELOPMENT (PUD) PLAN

The goal of the Streamside PUD is to preserve the natural open spaces within the community and provide additional open spaces and parks. Streamside preserves more than 35% of the site in open space. Streamside also includes architectural commitments above and beyond

the ordinance requirements in order to maintain an upscale community with high property/assessed values.

An Illustrative conceptual plan is attached as Exhibit B & C. The exact parcel boundaries will be determined by the final plat, and Streamside will contain a maximum of 54 units.

V. PLANNED UNIT DEVELOPMENT (PUD) PERMITTED USES

Single Family Residential.

Permitted Uses:

Single Family Detached Dwellings

Special Conditions:

1. Typical Lot Area: 12,600 square feet (90' width x 140' depth)
2. Lot Width: 90' minimum
 - 16% of lots 90' to 100'
 - 25% of lots 100' or greater
3. Building Setbacks:
 - a. Front Yard: 30'
 - b. Side Yard: 8'
Side Yard Corner: 20'
 - c. Rear Yard: 30' (Lots 1 and 2 have 40' minimum setback)

Open Space.

The following standards will apply for all uses in the Open Space.

Permitted Uses:

Bicycle and walking trails, detention/retention areas, wetlands, wetland buffers, environmental areas, landscape buffers, screening buffers, playgrounds, entrance markers and community signage; the primary function of which is to serve the residents and guests of the Planned Unit Development.

VI. COMMUNITY DEVELOPMENT REGULATIONS

General Development Regulations.

1. The community will be subject to a declaration of covenants and restrictions establishing procedures for architectural and landscape review and maintenance obligations of the Homeowners' Association (HOA) established.
2. The HOA will have the obligation to maintain common area facilities, landscaping, entries, signage, trails, and detention areas. Specifically, Section 5.03 of the Declaration of Covenants, Conditions and Restrictions for Streamside Estates establishes certain rights and remedies for the benefit of the Town of St. John, Indiana ("Town"), in the event that the Town is required to take action to maintain any such areas. The Declaration of Covenants, Conditions and Restrictions for Streamside Estates is attached as Exhibit F.
3. Sales offices in unsold units are permitted in each type of housing for the duration of the sale of the overall community.
4. Roads and other physical attributes shown on the PUD site plan are conceptual only, and their exact placement may be modified during the construction-plan review process.
5. Separate construction entrances may be established and maintained throughout the buildout of the community.

VII. MINIMUM ARCHITECTURAL STANDARDS

No residence shall be permitted to be constructed upon a Lot which shall fail to comply with the following minimum requirements:

- (a) **Minimum Finished Floor Area.** The minimum finished floor area (as hereinafter defined) of each residence on a Lot shall be as follows:
 - (1) All one (1) story residences shall have a minimum finished floor area of one thousand nine hundred (1,900) square feet.
 - (2) All one and one-half (1-1/2) story residences shall have a minimum finished floor area of two thousand two hundred fifty (2,250) square feet.
 - (3) All two (2) story residences shall have a minimum finished floor area of two thousand four hundred (2,400) square feet.
 - (4) No Bi-level, Tri-level, or Quad-level homes.

(b) Requirements Applicable to all Residence Construction.

(1) All residences shall be required to have at least an attached 2 ½ or 3 car garage, which garage, as indicated below, shall not be included when computing the finished floor area. 2 car garages will not be permitted. All garage doors will include windows and/or decorative trim.

(2) All homes will include a minimum level of 30% masonry (brick or stone) on the front of the homes (“Dominant Exterior Material”), unless a variance is approved by the Plan Commission. These standards facilitate the goal of Streamside to provide a wide variety of home styles, including traditional, craftsman, modern farmhouse, etc. All other exterior wall surfaces shall be of LP siding/fiber cement (“Exterior Material”). Vinyl siding shall not be permitted.

(3) Minimum roof pitch of 6/12 with the exception of dormers which may be 4/12.

(4) Homes that back up to 109th Avenue or White Oak Avenue will include a rear bump-out such as a sunroom, breakfast nook, morning room, great room extension, or outdoor living option.

(5) All driveways and service walks shall be of concrete.

(6) All plumbing stacks and roof vents or ventilators shall be located in the rear of the residence roof whenever possible.

(7) Landscaping to include at a minimum front yard sod. All front yards will require irrigation which will be on a separate meter. Seed is permitted in the rear yard.

(8) The sides and rear of all homes will have a minimum of 2 windows. No blank walls are permitted.

(9) All windows on the sides and rear of the homes will include a 4” window trim. 3 window trim colors will be utilized throughout Streamside to eliminate monotony.

(c) Home shall be differentiated by several factors and styles. In addition to the different physical attributes of the homes, there are specific styles that will be utilized to offer uniqueness and character. These include:

- (1) Arts & Crafts - stylings typically include the use of shake siding, decorative column bases, board and batten shutters, clipped roofs, and stone.
- (2) Colonial - stylings typically include the use of horizontal siding, colonial shutters, decorative header trim details, and brick.
- (3) Craftsman - stylings typically include the use of shake siding, decorative column bases, board and batten shutters, and stone.
- (4) Traditional - stylings typically include the use of horizontal siding, colonial shutters, decorative header trim details, and either brick or stone.
- (5) Shingle - stylings typically include the use of shake siding, columns with brackets, board and batten shutters, and stone.
- (6) Farmhouse - stylings typically include the use of board and batten siding, board and batten shutters, accent detailing, and stone

VIII. FENCES

Any fence must be approved by the Declarant or Architectural Review Committee as to size, location, height and composition before it may be installed. Only aluminum open-picket fences will be allowed, and in any and all occasions, wood, vinyl, chain link fences and privacy fences are prohibited from use anywhere in the Subdivision, including dog runs and pet enclosures. All fences approved by the Declarant or Architectural Review Committee must also be located in the rear of a Lot and approved and permitted by the Town of St. John.

IX. POOLS

As required by the terms of the Declaration of Covenants, Conditions, Restrictions and Easements for Streamside, all pools will be required to be in-ground pools. No above-ground pools are permitted. Homeowners will be required to follow all St. John regulations.

X. COMMUNITY AMENITIES

Community Amenities include paved paths, trail overlooks, and a playground area on more than 13 acres of open space. Artistic renderings of the trail overlook, playground area, and entry feature can be found on Exhibit D. Final detailed plans will be included with the Primary Plat and Engineering drawings.

A sidewalk/trail will be installed adjacent to the south side of 109th Avenue from white Oak Ave. on the east to the adjoining church property to the west, additionally, a trail will be routed thru the development. This sidewalk/trail will also be constructed along the west side of White Oak Ave. Specifics of crossing the single family homesite will need to be resolved between this property owner and the Town as ROW will need to be dedicated.

The open lot south of and adjoining lot #1 will be a natural open space with native plantings, grasses, and flowers.

The primary entrance on White Oak Avenue will be irrigated to a distance of approximately 200 feet on either side of the entry.

XI. ANTI-MONOTONY

It is the goal of Streamside to provide a wide variety of floor plans and elevations. As such, the anti-monotony standards on the attached Exhibit E shall be enforced.

XII. SUMMARY OF PUD VARIANCES

<u>Item</u>	<u>St. John R-1 Standard</u>	<u>Streamside Standard</u>
Lot Area	20,000 square feet	12,600 square feet
Lot Width	100'	90'
Rear Yard Setback	40'	30' (Lots 1 and 2 – 40')

Exhibit A

THE EAST HALF OF THE NORTHEAST QUARTER, EXCEPT THE SOUTH 1265.15 FEET
AND EXCEPT THE NORTH 380 FEET OF THE EAST 450 FEET AND EXCEPT THE
SOUTH 140 FEET OF THE NORTH 520 FEET OF THE EAST 311.14 FEET OF SECTION 7,
TOWNSHIP 34 NORTH, RANGE 9 WEST OF THE 2ND P.M., IN LAKE COUNTY, IN.

Exhibit B
Illustrative Plan



SITE DATA

LAND USE	UNITS	AREA	% OF SITE
SINGLE FAMILY (90'w x 140' MIN.)	54	17.09	46.2%
OPEN SPACE	-	13.63	36.9%
DEDICATED RIGHT OF WAYS	-	5.06	13.7%
PERIMETER R.O.W.	-	1.18	3.2%
TOTAL	54	36.96 AC.	100.0%

Exhibit C Dimensioned Plan

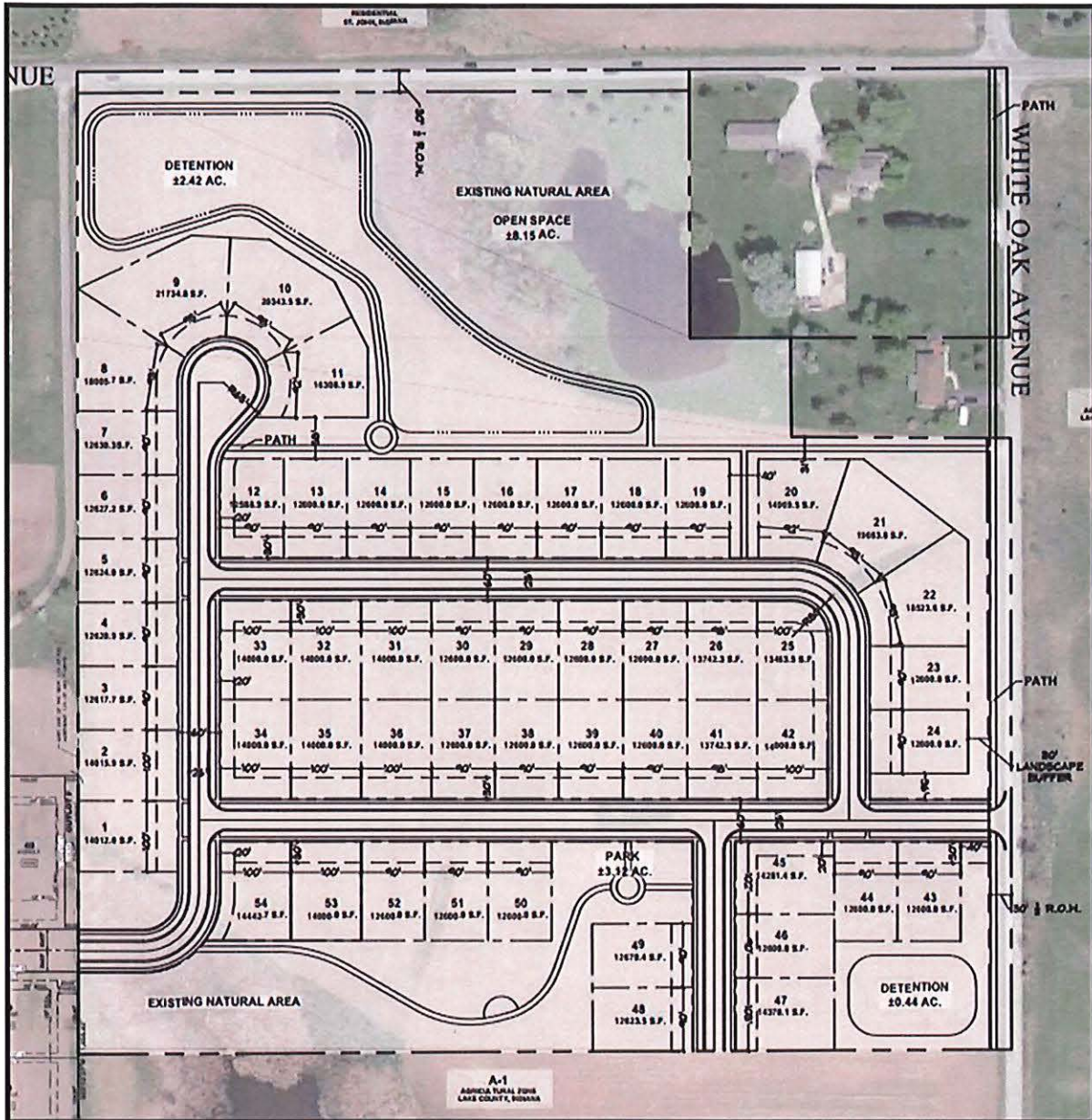


Exhibit D
Amenity Renderings

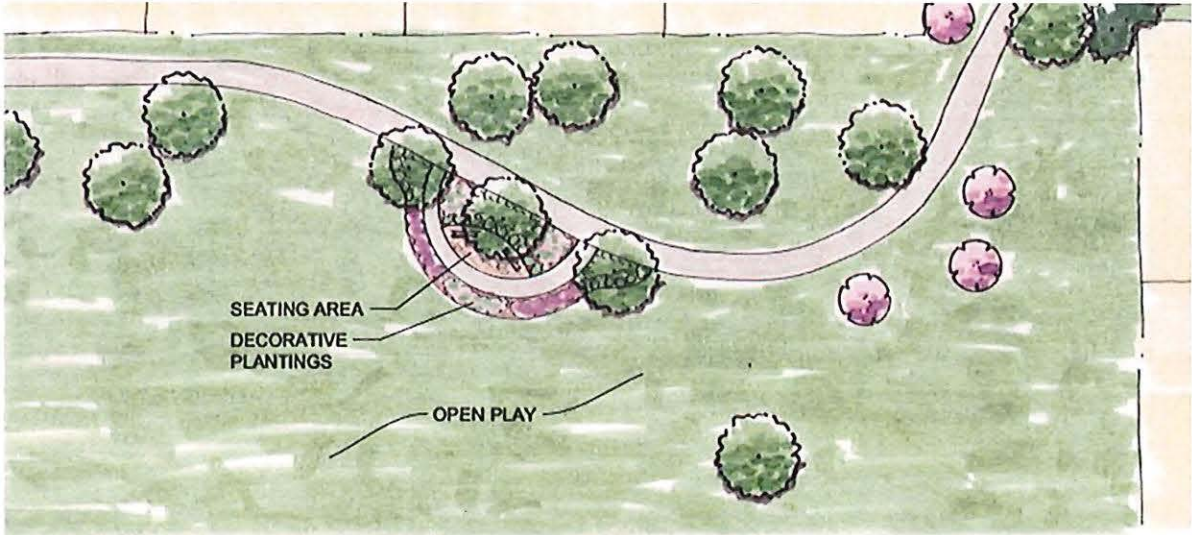
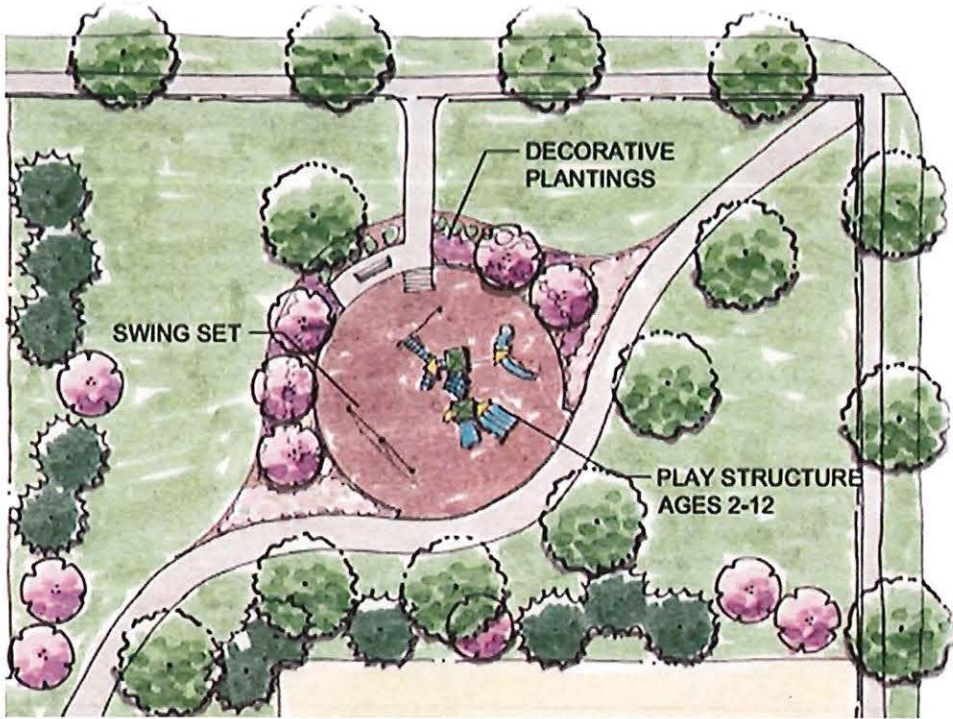


Exhibit D
Amenity Renderings

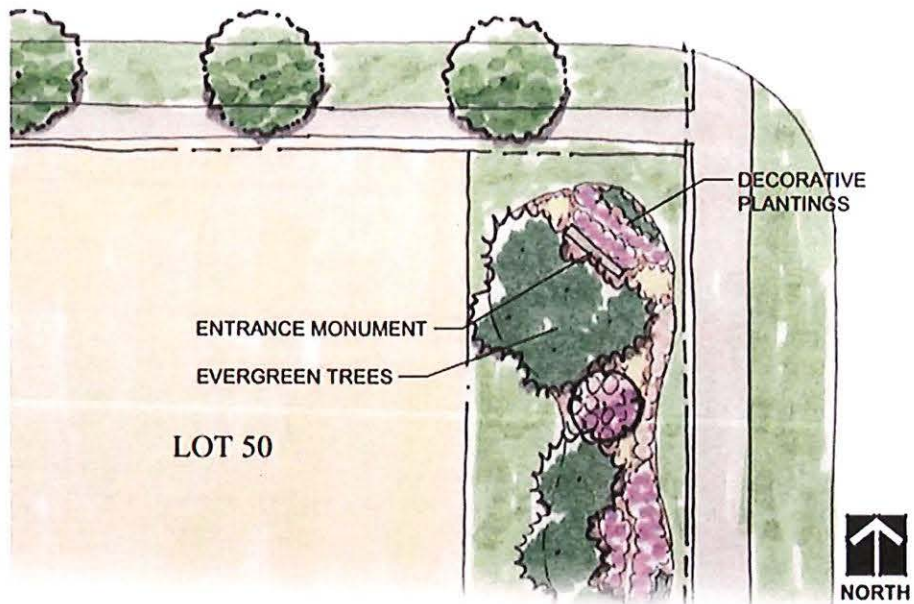
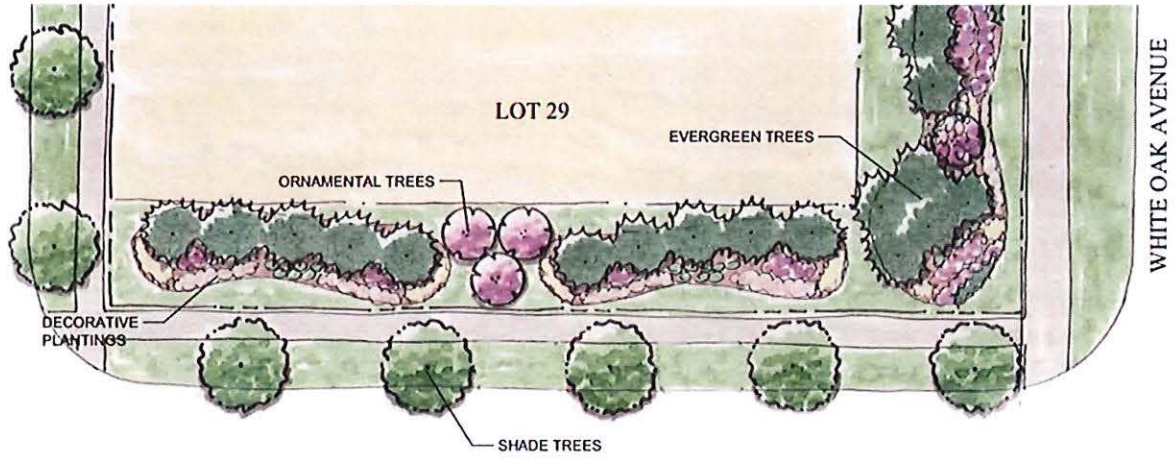
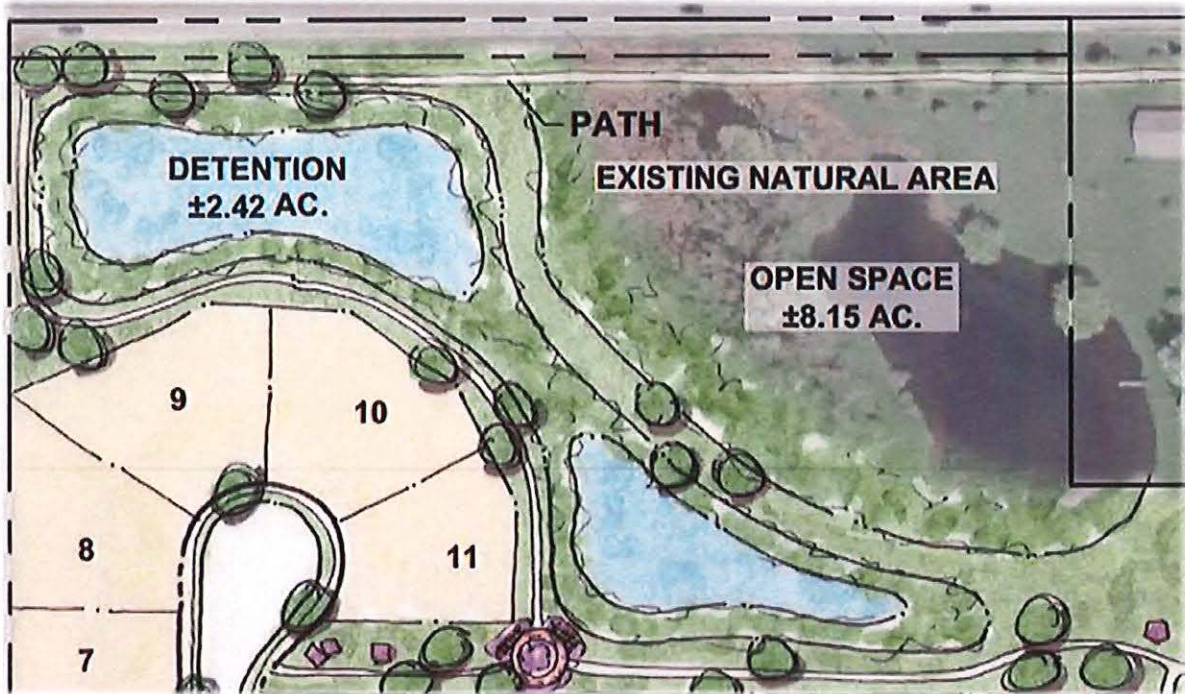


Exhibit D
Amenity Renderings



**Exhibit D
Amenity Renderings**



OVERLOOK CONCEPT



MONUMENT ELEVATION

Exhibit E Anti-Monotony

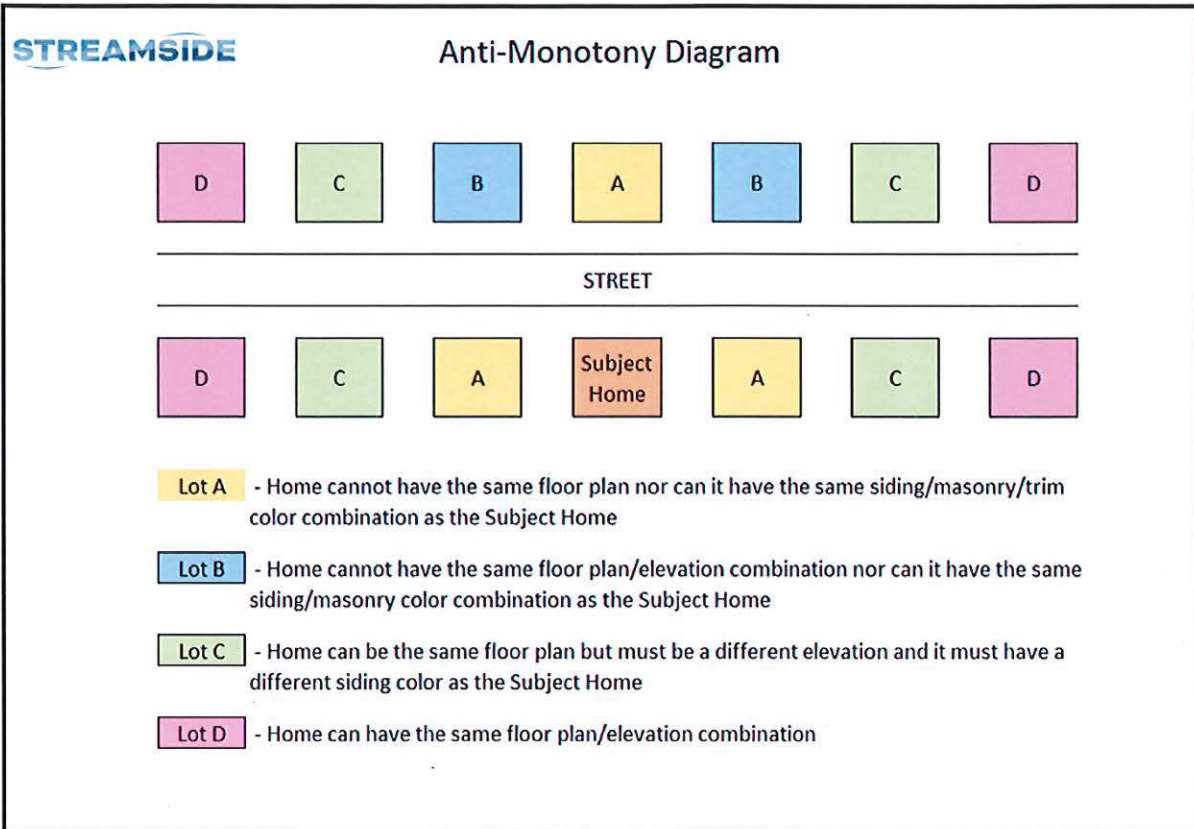


Exhibit F

*DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
STREAMSIDE ESTATES*

This Declaration of Covenants, Conditions and Restrictions for Streamside Estates is made this ___ day of _____, 2022 by _____ (“Declarant”).

WITNESSETH:

WHEREAS, the Declarant is the Owner of certain real property located in St. John, Lake County, Indiana, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (“Property”), and the Declarant desires to subject such Property to the provisions of this Declaration and to provide a flexible and reasonable method for the administration and maintenance of such Property;

WHEREAS, as hereinafter provided in this Declaration, the Declarant has retained and reserved the right, privilege, and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the residential community described herein, all or any portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, and such other Property as the Declarant may acquire from time to time and/or wish to subject to the terms of this Declaration; and

NOW, THEREFORE, the Declarant hereby declares that all of the Property described in Exhibit A and any additional property described in Exhibit B as may by subsequent amendment hereto be subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof and where provided herein, shall benefit the Property on which certain Community Areas are located.

ARTICLE I
DEFINITIONS

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) “Additional Property” shall mean and refer to the real property described in Exhibit B attached hereto and all improvements thereon, together with such other additional property and all improvements thereon as Declarant shall acquire from time to time and shall desire to subject to the terms of this Declaration and by amendment to Exhibit B hereto recorded in the Office of the County Recorder where the project is developed in the state of Indiana, included within the property described in Exhibit B.

(b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Streamside Community Association, Inc., an Indiana nonprofit corporation, as amended from time to time.

(c) "Association" shall mean and refer to Streamside Community Association, Inc., an Indiana nonprofit corporation.

(d) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(e) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Streamside Community Association, Inc., which govern the administration and operation of the Association, as the same may be amended from time to time, a copy of which is attached hereto as Exhibit C.

(f) "Community Area" shall mean and refer to all real and personal property now or hereafter owned and/or maintained by the Association for the common use and enjoyment of the Owners within the Property, or this Neighborhood. The legal description of the Community Area existing as of the date hereof is attached hereto as Exhibit D and such additional parcels of land as may be subjected to the terms of this Declaration in accordance with Article II.

(g) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(h) "County" shall mean Lake County, Indiana.

(i) "Declarant" shall mean and refer to _____, its successors and assigns.

(j) "Declarant Rights" shall mean any and all rights, powers and privileges reserved, granted or otherwise provided for herein which may be exercised by, or which benefit only, the Declarant.

(k) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Streamside Estates and all amendments thereof filed for record in the Office of the Recorder.

(l) "Development", with an initial capital letter, shall mean and refer to the Property and all improvements located or constructed thereon, and any portion of the Additional Property submitted to the provisions hereof pursuant to Section 2.02.

(m) "Dwelling", with an initial capital letter, shall mean and refer to any improved property intended for use as a single-family detached dwelling located within the Development.

(n) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(o) "Lease" shall mean and refer to any lease, sublease, or rental contract, whether oral or written.

(p) "Lot" shall mean and refer to any land portion of the Property (and a subdivided Lot of record) upon which it is intended that a Dwelling (or Dwellings, in the event condominium units are constructed) shall be constructed.

(q) "Member" shall mean an Owner who holds Membership in the Association pursuant to Section 4.01 of this Declaration.

(r) "Mortgage", with an initial capital letter, shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.

(s) "Mortgagee", with an initial capital letter, shall mean and refer to the holder of a Mortgage.

(t) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(u) "Office of the Recorder" shall mean the Office of the Recorder located in the County.

(v) "Owner", with an initial capital letter, shall mean and refer to one (1) or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, excluding, however, those persons having such an interest under a Mortgage. In the event that there is recorded in the Office of the Recorder, any installment land sales contract covering any Lot or Dwelling, the Owner of such Lot or Dwelling shall be the purchaser under said contract and not the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payment for a Lot or Dwelling for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such Lot or Dwelling until all such payments are made, although the purchaser is given use of such Lot or Dwelling.

(w) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(x) "Property," with an initial capital letter, shall mean and refer to those tracts or parcels of land described on Exhibit A together with all improvements thereon, including the Community Area, utility systems, drainage systems, and other improvements serving the Lots and Dwellings, and, upon submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit B, or any portion thereof, or any tracts or parcels of land hereafter added thereto, together with all improvements thereon.

(y) "Record" or "place of record" means to record a document in the Office of the Recorder.

(z) "Town" shall mean the Town of St. John, Indiana.

(aa) "Unit Membership" shall mean the Membership in the Association which is appurtenant to a member's Dwelling or Lot as provided in Section 4.01 of this Declaration.

ARTICLE II
DEVELOPMENT

2.01 Development of Property. Except as otherwise set forth in Section 10.01, all Lots within the Development shall be and are hereby restricted exclusively to residential use and shall be subject to the standards and restrictions set forth in Article X hereof. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option (as defined in Section 2.02) to submit Additional Property to the terms of this Declaration and to make improvements and changes to all Community Area and to any other portion of the Property owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Community Area, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Community Area, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) installation of security and/or refuse facilities. Any and all improvements or changes made, as aforesaid, shall not result in an encroachment on Lots not owned by Declarant.

2.02 Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Declarant in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

(a) The option may be exercised from time to time during a period of fifteen (15) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such fifteen (15) year period by executing and filing an agreement evidencing such termination in the Office of the, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such fifteen (15) year period.

(b) The legal description of the Additional Property as of the date hereof is set forth on Exhibit B, portions of the Additional Property (together with additions thereto made in accordance herewith) may be added to the Development and to the terms of this Declaration at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence, or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the Lots and Dwellings, as well as the Community Area, if any, to be added to the Development in connection therewith.

(d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect.

(e) The option reserved by Declarant to cause all, or any portion of, the Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.02 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the Office of the Recorder, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Development by such amendment. Simultaneously therewith, Declarant may, at its option, convey to the Association the Community Area, if any, contained within the Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and/or the Additional Property, and any exceptions which would be disclosed by survey or physical inspection of such parcel(s). Any such amendment shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as provisions embracing the real property described in Exhibit A and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. In no event shall Declarant be obligated to submit the Additional Property, or any portion thereof, to the provisions of this Declaration or to impose upon the Additional Property, or any portion thereof, any covenants, conditions, or restrictions whatsoever.

2.03 Interest Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, subject to Declarant's right to add the Additional Property, or any portion or portions thereof, to the Development as hereinabove provided, and to convey to the purchaser thereof the title to the Lot or Dwelling and its appurtenant Membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

2.04 Subdivision Plat. Declarant reserves the right to record, modify, amend, revise, and add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of the Lots, Dwellings, Community Area, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions.

ARTICLE III **PROPERTY RIGHTS**

3.01 General. Each Lot and Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive Ownership and possession of his Lot or Dwelling, subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services to a Lot or Dwelling lie partially within and partially outside of the designated boundaries of the Lot or Dwelling in question, any portions thereof which serve only such Lot or Dwelling shall be deemed to be a part of such Lot or Dwelling, and any portions thereof which serve more than one (1) Lot or

Dwelling, or any portion of the Community Area, shall be deemed to be a part of the Community Area. The Ownership of each Lot and Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, Membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically pass to his successor-in-title to his Lot or Dwelling. Lots shall not be subdivided, and, except as otherwise provided hereunder, the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of at least a majority of the Owners in the Development and of Declarant, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two (2) or more Lots into a larger parcel in order to create a Dwelling site larger than one (1) Lot nor shall the prohibition against the subdivision of Lots and relocation of boundaries between Lots apply to the Declarant. In the event of such combination, any assessment obligation shall be imposed on the original pre-combined Lots.

3.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Community Area, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

(a) The right of the Association to borrow money (i) for the purpose of improving the Community Area, or any portion thereof, (ii) for acquiring additional Community Area, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Community Area, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.03 hereof, to give as security for the payment of any such loan a mortgage deed or other security instrument conveying all or any portion of the Community Area; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The rights and easements reserved to Declarant in this Declaration.

(c) The right of the Association to grant and accept easements as provided in this Declaration hereof and to dedicate or transfer fee simple title to all or any portion of the Community Area to the Town or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.07 hereof for the benefit of the Association, its directors, officers, agents, and employees.

(e) The rights and easements reserved in Section 3.09 hereof for the benefit of the Additional Property.

(f) The rights of the holder (and its successors and assigns) of any Mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

(g) The right of the Association to have reasonable rules and regulations.

(h) The right of the Association to suspend the use of any facilities located upon the Community Area by a Member for the period of time during which any assessment against his or her Lot remains unpaid and for an additional reasonable period for any infraction of its rules and regulations.

(i) The right of the Association to charge reasonable admissions and other fees for the use of any facilities situated upon any Community Area.

(j) The right of the Association to dedicate or transfer all or any part of the Community Area to any public agency, authority, corporation, or utility for such purposes and subject to such conditions as may be agreed by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by fifty percent (50%) of all of the Owners then existing, has been recorded in the Public Records of the County.

(k) The right of the Association to limit the number of guests of Members for use of the Community Areas.

(l) The right of the Association to levy assessments as provided in this Declaration.

3.03 Access. All Owners, by accepting title to Lots or Dwellings conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot or Dwelling and acknowledge and agree that such access, ingress, and egress shall be limited to roads, sidewalks, walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all Lots and Dwellings shall be provided at all times.

3.04 Easements for Declarant. During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the Community Area and Lots for the purpose of constructing Dwellings and other improvements in and to the Lots and within the Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Community Area) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all thing reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains Ownership of a Dwelling or Lot or has the right to submit the Additional Property or any portion thereof to the Development, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress, and egress to the Community Area and Lots and improvements thereon for such purposes

as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Community Area and Lots.

3.05 Changes in Boundaries: Additions to Community Area. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Community Area, any Lots or Dwellings owned by Declarant and the realignment of boundaries between adjacent Lots and/or Dwellings owned by Declarant. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional Property, such real property to be conveyed to the Association as an addition to the Community Area and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors, and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Community Area, such other portion of the Development owned by Declarant as it, in its discretion, shall choose.

3.06 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot, Dwelling, or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner, or Occupant of the Lot or Dwelling directly affected thereby.

3.07 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement, and/or sale of Lots, Dwellings, Community Area, or the Additional Property, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

3.08 Maintenance Easement. Subject to the terms of Section 5.02(c) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

3.09 Burden upon the Property. Declarant hereby declares that this Declaration and the covenants, restrictions and easements established herein shall be covenants to run with the land. Said covenants and restrictions shall inure to the benefit of and be binding upon each and every Owner, and his or her respective heirs, representatives, successors, purchaser, lessees, grantees and mortgagees. By the recording or acceptance of the conveyance of a Lot or Dwelling or any interest therein, the person or entity to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration and the By-Laws of the Association.

3.10 Nonseverability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of any portion of the Property as more specifically set forth herein and may not be severed or alienated from such Ownership.

ARTICLE IV
MEMBERSHIP AND VOTING
RIGHTS IN THE ASSOCIATION:
BOARD OF DIRECTORS OF THE ASSOCIATION

4.01 Membership. Every Owner of a Dwelling or Lot (including the Declarant) is hereby declared to be a Member of the Association. Membership is appurtenant to and shall not be separated from Ownership of such Owner's Dwelling or Lot. Each such Owner, by acceptance of a deed or other conveyance of a Dwelling or Lot, thereby becomes a Member, whether or not this Declaration or such membership is made a part of, incorporated by reference in, or expressed in said deed or conveyance. There shall be one (1) membership allocable to each Dwelling or Lot (herein called a "Unit Membership") and any Member who is the Owner of more than one (1) such Dwelling or Lot shall have the number and type of Unit Memberships equal to the number of such Dwellings or Lots. If the record Ownership of a Dwelling or Lot shall be in more than one (1) person, or if an Owner of a Dwelling or Lot is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the Unit Membership and be responsible for the obligations attributable thereto, shall be designated by such Owner or Owners in writing.

4.02 Method of Voting. The total number of votes which may be cast on any matter requiring assent of a class of Members of the Association shall be equal to the total number of Unit Memberships for such class at the time of any such vote. Unless this Declaration or the Articles of Incorporation or By-Laws of the Association, or any law, shall specify a greater vote, all Association matters requiring action by Members shall be decided by a majority of the votes cast by Members of the respective class voting at a meeting at which a quorum (as defined in the By-Laws) is present. In the event of a tie, the tie shall be broken by a mediator chosen by the Members. Should the Members be unable to reach an agreement on the selection of a mediator, the head of the building department in the governing jurisdiction shall choose the mediator.

4.03 Board of Directors.

(a) After the period of Declarant Control has expired, the Association shall be governed by its Board of Directors ("Board") comprised of three (3) persons duly appointed or elected as provided herein and in the Articles of Incorporation and By-Laws of the Association. The initial Board shall be comprised of three (3) persons duly appointed by the Declarant pursuant to its rights under Section 4.04 hereof, until such time as the initial meeting to elect the first Board occurs.

(b) The Board shall administer the Community Area in accordance with the terms and provisions of this Declaration, and in accordance with the Articles of Incorporation and By-Laws of the Association. All matters requiring action by the Board shall be decided by the majority vote of the Board, except as otherwise provided herein or in the By-Laws.

(c) Prior to the appointment of the first Board of the Association pursuant to Paragraph 4.06 hereof, Declarant (or its beneficiary or designees) may exercise all rights, powers and privileges of the Board and may perform all of its functions, including its functions under Article IV of this Declaration.

4.04 Appointment of Directors by Declarant. Notwithstanding any other provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association, the first and each subsequent Board shall consist of, and vacancies on the Board shall be filled by, such persons as Declarant shall from time to time appoint, until the first to occur of any one of the following events: (i) Declarant surrenders such authority by an express amendment to this Declaration executed and recorded by Declarant; or (ii) upon the sale and conveyance of all Lots and Dwellings in the Development to persons other than the Declarant or builders holding title for purposes of development and sale. For purposes of this Section 4.04, "Dwellings in the Development" shall refer to all Dwellings within or contemplated to be within the Property and Additional Property. Such right of Declarant to appoint directors to the Board shall be to the exclusion of the right of the Members so to do. The Owners or Members shall not, without the prior written consent of Declarant, have the right to amend, modify or change the Articles of Incorporation or By-Laws of the Association to in any way diminish the authority of the Board during the period that Declarant has the right to appoint any Members of the Board.

Declarant may, from time to time, by written notice to the Association, voluntarily terminate its right to appoint one (1) or more Directors, and continue to exercise its right to appoint the remaining Members of the Board for the period hereinabove specified. Declarant's election to terminate its right to appoint any number of Members of the Board or to terminate its control of the Association, shall not affect the right of Declarant to participate in the Association as a Member thereof. All directors who are not subject to appointment by Declarant shall be elected in accordance with the provisions of Paragraphs 4.05 and 4.06 hereof.

4.05 Initial Meeting of Members to Elect Directors. Upon receipt by the President of the Association of a copy of the written notice of Declarant to voluntarily terminate its control of the Association, described in Paragraph 4.04(i), or of any other appropriate evidence of the termination of Declarant's right to appoint all the directors of the Board, he shall promptly convene a meeting of the Members for the purpose of electing a new Board or to elect those directors who no longer are to be appointed by Declarant.

4.06 Election of Directors. Upon termination of Declarant's right to appoint any of or all the directors of the Board, pursuant to Paragraph 4.04 hereof, those directors not subject to appointment by Declarant shall be selected by vote of the Members in accordance with the provisions of this Article. Notwithstanding such election, any director theretofore appointed by Declarant who does not elect to resign may stay in office for the balance of his unexpired term and until his successor is elected and qualified.

4.07 Informal Action by Directors. Unless specifically prohibited by the Articles of Incorporation or By-Laws of the Association, any action required by this Declaration to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors of the Board entitled to vote with respect to the subject matter thereof. Any such consent signed by all the directors of the Board shall have the same effect as a unanimous vote.

4.08 Informal Action by Members. Any action required by this Declaration to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members may be

taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of the Members.

4.09 Board Liability. The Declarant (and its beneficiary), its directors, officers, shareholders, partners, employees or agents, the Board, Members of the Board, officers of the Association, and the agents and employees of any of them (all of the above hereinafter referred to as the "Protected Parties"), shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions which shall occur subsequent to the date of the recording of this Declaration, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits, losses, damages, costs and expenses, including, without limitation, attorneys' fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. Each Owner shall be entitled to a right of contribution from every other Owner in respect of said indemnity to the end that, to the extent possible, the burden of any such indemnity shall be borne by the Owners at the time the loss, cost, damage or expense is incurred in the proportion that the number of Dwellings or Lots in the Property owned by each respective Owner bears to the total number of Dwellings or Lots in the Property at the time the loss, cost, damage or expense is incurred. The Board shall assess each Owner for his share of the cost of such indemnification, and such assessment shall be collectible and enforceable in mode and manner as set forth in Article IX hereof. To the extent possible the obligation of the Owners for indemnification and the Board's liability hereunder shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

4.10 Nonprofit Purposes of Association. Nothing herein shall be construed to give the Association authority to conduct an active business for profit on its own behalf or on behalf of the Members, or on behalf of the Declarant.

4.11 Governing Law. Except as otherwise provided in this Declaration, the Association, the Board, officers and Members shall be governed by the Indiana Nonprofit Corporation Act.

4.12 Board as Representative of Owners. The Board shall have standing and capacity to act in a representative capacity in relation to matters involving the Community Area or more than one (1) Dwelling or Lot, on behalf of the Owners as their interest may appear.

ARTICLE V **MAINTENANCE**

5.01 Responsibilities of Owners. Unless specifically identified herein, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein, grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Unless otherwise provided, the maintenance and repair of all Community Areas (including all landscaping and grounds and all recreational facilities and other improvements) shall be the responsibility of the Association. Each Owner shall be responsible for maintaining his or its Lot or Dwelling, as the case may be, in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures. All exterior trim or other finishes that are not maintenance free shall be repainted or restained the original color at least every five (5) years, and pre-approval from the Architectural Control Committee is necessary to change colors. Each Owner must provide evidence of such maintenance upon request. As provided in Section 5.02(c) hereof, each Owner

shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge.

5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Community Area, if any, which responsibility shall include the maintenance, repair, and replacement of (i) all Amenities under Section 2.05 of the Community Declaration and all walks and trails (if any), landscaped area, facilities, and other improvements made by Declarant or the Association situated within the Community Area or within easements encumbering Lots or Dwellings pursuant to Section 3.03 hereof, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Community Area and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all lakes and ponds situated within or upon the Community Area, (iv) all retention areas and facilities constructed by Declarant in the Community Area; and (v) entry monuments and parks situated within the Property. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Community Area, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Community Area or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of the Owner.

(b) In the event that Declarant or the Board determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency

situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the assessment to which such Owner and his Lot or Dwelling are subject and shall become a lien against such Lot or Dwelling shall be added to and become a part of the assessments for all Owners and shall become a lien against such Owners' Lots or Dwellings. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

5.03 Continuing Duties, Responsibilities and Obligations of the Association and Owners to the Town. The covenants and conditions set forth in this Article V, Section 5.03, are intended to, and shall inure to the benefit of the Town of St. John, Indiana (the "Town"). As set forth in Section 5.02 above, the Association shall at its own cost, operate, maintain, and keep in good repair the stormwater facilities, including detention and retention ponds, and public walkways on the Property, as identified in the plans and specifications set forth in the Planned Unit Development (PUD) Development Plan, as approved by the Town, and the Secondary (Final) plat of subdivision. In the event that the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration, including but not limited to the operation, maintenance and repair of stormwater facilities and public walkways, and such delinquency shall exist on the part of the Association for a period of fifteen (15) days after the date of delivery by the Town to the Association or such Owner(s) of written notice advising the Association or Owner(s) of the existence and nature of such delinquency, the Town shall have the right, but not the obligation, to perform the obligations required to be performed by the Association pursuant to this Declaration, including but not limited to the right of ingress and egress over those portions of the Property necessary to perform inspections, maintenance and repairs of the stormwater facilities and public walkways and conduct other activities specified in this Declaration. Notwithstanding the foregoing, in the case of an emergency involving an immediate threat to the health and safety of persons in, on or about the Property, the circumstances of which do not reasonably permit the Town's use of the aforesaid process of fifteen (15) day written notice and cure period, as determined in good faith by the Town, the Town may undertake such work as it deems necessary to correct, operate, maintain or repair any condition involving a danger or hazard to the public health or safety as is reasonable under the circumstances, without advance written notice to the Association or Owner(s). In the event that the Town undertakes any such work activities, including without limitation inspection, operation, maintenance and/or repairs of the stormwater facilities and public walkways on the Property, with or without advance notice to the Association or Owner(s), the Association shall pay promptly to the Town the amount of the costs and expenses incurred by the Town in the performance of such work, including compensation for staff time and the use of Town equipment, as well as materials, outside services and attorney's fees. In the event the Town performs any of the Association's obligations and the Association fails to pay the Town any such costs and expenses incurred by the Town within thirty (30) days after the date of the Town's demand for payment or date of any statement presented to the Association, the Town shall have the right to levy an assessment on each Lot or Dwelling for the costs and expenses incurred by the Town in the performance of such work to the same extent and as fully as the Association might do pursuant to the provisions contained herein. Should any Owner fail to pay to the Town such Owner's portion of any assessment levied pursuant to this paragraph upon the due date thereof, then the Town shall have the right to exercise all rights, powers, privileges and remedies granted to the Association by this Declaration, and any other remedies provided by law, including but not limited to the filing and/or foreclosure of liens for unpaid assessments due and owing to the Town. This paragraph is not intended, nor shall it serve, as a limitation on other remedies that may be pursued by the Town.

ARTICLE VI
CASUALTY LOSSES

6.01 Damage or Destruction to Community Area. Immediately after the damage or destruction by fire or other casualty to all or any part of the Community Area covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Community Area, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, such special assessment to be in an amount sufficient to provide funds to pay such excess costs of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied or as one lump sum payment, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Community Area damaged or destroyed by fire or other casualty shall be cleared and the Community Area left in a clean, orderly, safe, and sightly condition.

6.02 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any Lots or Dwellings, and in the further event that either the Owner of such Lot or Dwelling responsible for the repair and replacement of such elects not to repair or rebuild the damaged or destroyed Lot or Dwelling, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Dwelling in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such Lot, Dwelling, or other improvements, such Owner shall repair or rebuild such Lot, Dwelling, or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building, and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

6.03. Insurance. The insurance which may be carried upon the Community Area and personal property shall be governed by the following provisions:

(a) Authority to Purchase. All insurance policies upon the Community Area and personal property shall be purchased by the Association for the benefit of the Members of the Association. If the insurance companies issuing said policies agree, such policies shall provide that the insurer waives its rights of subrogation as to any claims against Owners, the Association, the Members thereof and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Association and held as part of the records of the Association.

(b) Policies to be Secured by the Association. The policies to be secured by the Association are as follows:

(1) Casualty. The buildings and other insurable improvements upon the Community Area and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

- (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;
- (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including, but not limited to, vandalism, malicious mischief, windstorm and water damage;

(2) Errors and Omissions. Public liability, officers, directors and employees liability for errors and omissions, and Property damage in such amounts and such forms as may be required by the Association.

(3) Workmen's Compensation. Workmen's Compensation policy to meet the requirements of law.

(4) General Liability. Liability insurance to cover liabilities of the Association.

(c) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses.

(d) Beneficiary of Policies. All insurance policies purchased by the Association shall be for the benefit of the Association and shall provide that all proceeds payable as a result of losses thereunder shall be paid to the Association. Proceeds received from insurance policies shall be used by the Association to repair or replace the Property damaged. In the event the proceeds are insufficient, the Association may levy assessments to cover such deficiency.

(e) Disposal of Proceeds. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance after payment of all costs of the reconstruction or repair for which the proceeds of the

policies were received, such balance shall be retained by the Association and regarded as miscellaneous revenue to the Association.

(f) Insurance Adjustments. Each Member shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association.

(g) Lots and Dwellings. Each Owner of a Lot or Dwelling shall be responsible to procure all insurance relating to the Lot and/or Dwelling and any and all personal property of the Owner.

ARTICLE VII CONDEMNATION

7.01 Condemnation of Community Area. Whenever all or any part of the Community Area shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy-five percent (75%) of the total vote of the Association (which conveyance may only occur with the approval of Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development), the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Community Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Community Area which are available therefore, in accordance with the plans approved by the Board, the Architectural Control Committee, and by Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, or as a lump sum payment, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Community Area, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the Community Area, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners of any Lot or Dwelling taken for their interest in such Lot or Dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board, (ii) the Owners of all Lots or Dwellings wholly or partially taken or sold, together with the Mortgagees for each such Lot or Dwelling, and (iii) Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

7.02 Condemnation of Lots or Dwellings.

(a) In the event that all or any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot or Dwelling responsible for the maintenance and repair of such Lot or Dwelling, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot or Dwelling and any remaining undamaged improvements thereon in a clean, orderly, safe, and slightly condition. In addition, if the size or configuration of such Lot or Dwelling remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and slightly condition referred to above, of deeding the remaining portion of the Lot or Dwelling (at no cost to the Association) as a part of the Community Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.

(b) In the event that any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot or Dwelling responsible for the maintenance and repair of such Lot or Dwelling elects to restore the remainder of the Lot or Dwelling, such Owner making such election shall restore such remainder of such Lot or Dwelling as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

**ARTICLE VIII
ADMINISTRATION**

8.01 Community Area. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair,

pursuant to the terms and conditions thereof. Furthermore, the Association may be responsible to maintain dedicated areas if such maintenance is required by the applicable governmental authority. Except to the extent otherwise required by the provisions of the laws of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the laws of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the laws of Indiana, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the laws of Indiana, this Declaration, and the By-Laws, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one (1) or more Lots and/or Dwellings to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots and Dwellings, to furnish trash collections, water, sewer, and/or security service for the Community Area and/or the Lots and Dwellings. Notwithstanding the foregoing provisions of this Section 8.03 or any other provisions of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Community Area.

8.03 Agreements. Subject to the prior approval of Declarant for so long as Declarant shall have the right to appoint the Board pursuant to Section 4.06 hereof, all agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through the Board, shall have the authority to delegate to persons if its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or

desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

8.04 Management Agreement. The Declarant or the Board shall engage the initial management organization under contracts expiring not later than ninety (90) days after the date the initial meeting of Members is held ("Transfer Date"). Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board provided, however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Property before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Any management fees incurred pursuant to this Section 8.05 shall be paid from the assessments collected pursuant to Article IX hereof.

8.05 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The undivided interest of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the Ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot or Dwelling.

8.06 Rules and Regulations. The Association, through the Board, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Community Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Rules and Regulations are attached hereto as Exhibit F.

8.07 Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including court costs and reasonable attorney fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board) to which he may be made a party by reason of being or having been an officer or director at the time such expenses are incurred. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall as a Common Expense maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

ARTICLE IX

COVENANTS FOR MAINTENANCE ASSESSMENTS

9.01 Creation of the Lien and Personal Obligations. Each Owner of a Dwelling or Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance for each Dwelling or Lot owned by such Owner, hereby covenants and agrees and shall be

deemed to covenant and agree to pay to the Association such assessments as are levied pursuant to the provisions of this Declaration and the By-Laws of the Association. Such assessments, together with interest thereon and cost of collection, if any, as hereinafter provided, shall be a charge and continuing lien upon the Dwelling or Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the personal obligation of the Member who was the Owner of such Dwelling or Lot at the time when the same fell due.

9.02 Purpose of Assessments. The assessments for Common Expenses levied by the Association (or by Declarant acting on its behalf pursuant to Section 4.03(c) hereof) shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and in particular, without limiting the foregoing: (i) for the improvement and maintenance of the services and facilities devoted to the use and enjoyment of the Community Area, (ii) for the making of repairs, replacements and additions to the Community Area, defraying the cost of labor, equipment, and material required for the maintenance of the Community Area, (iii) for the operation, care, upkeep, maintenance, replacement and of any Community Areas, (iv) for trash removal on a regular basis; and (v) in general for carrying out the duties of the Board as set forth in this Declaration and the By-Laws of the Association; and for carrying out the purposes of the Association as stated herein and in its Charter.

9.03 Assessment Procedures.

(a) Preparation of Estimated Budget. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, fees, supplies and other items which, in the judgment of the Board, will be required to be provided to the Association or required to meet the Association's obligations during the ensuing calendar year to effect the purposes of the Association, a copy of which estimated budget shall be provided to all Owners at least thirty (30) days prior to its adoption by the Board. The annual budget shall take into account any estimated net operating income or deficit which may result from the operation of the Community Area during such year and income from user charges to be received pursuant to Section 9.03 hereof. Said estimated cash requirement shall be allocated among and assessed to Members in accordance with the provisions of Section 9.06 hereof. The Board shall give written notice, mailed or delivered, to each Owner no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of any proposed budget or any increase or establishment of an assessment.

(b) Date Payments Due. On or before January 1 of the ensuing year, each Member shall be personally obligated to pay, in the manner prescribed by Sections 9.06, 9.07 and 9.08 hereof, such Member's annual assessment, together with all user charges incurred by such Member during the preceding year. The Board shall be entitled to bill on a monthly basis if it so determines. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said estimated cash requirement, any net shortage or excess shall be applied as an adjustment to the installments under the current year's estimate falling due after the amount of such net shortage or excess for the preceding year has been determined.

(c) Commencement of Assessments. The assessments provided for herein shall commence for the Dwelling or Lots within the Property upon the conveyance by the Declarant of the Dwelling or Lot to a third party for occupancy, except as otherwise provided in Section 9.03(d) hereof. The Board shall fix the amount of the assessment against each Dwelling or Lot at least thirty (30) days in advance of each assessment period and in lieu thereof, the amount of the

prior year's assessment shall be the fixed amount. An Owner shall first be liable for payment of the assessment on the date of the conveyance of title to him. The Association shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Dwelling or Lot have been paid and, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein.

(d) Assessment on Declarant-Owned Lots. Declarant shall not be obligated to pay any assessments of the Association with regard to any Lots owned by Declarant.

(e) Adjustments to Estimated Budget. If any "estimated cash requirement" proves inadequate for any reason, the Declarant shall fund any operating deficiencies until the Association is turned over. Upon turnover of the Association, the Association will be professionally managed and the Board may at any time levy a further assessment. The Board shall serve notice of such further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Members shall be personally liable for and obligated to pay their respective adjusted monthly amount.

(f) Failure to Prepare Annual Budget. The failure or delay of the Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Member's obligation to pay his share of the estimated cash requirement as herein provided, whenever the same shall be determined and in the absence of any annual estimate or adjusted estimate, each Member shall continue to pay the charge at the then existing rate established for the previous record.

9.04 Special Assessments for Capital Improvements. In addition to the annual assessment authorized by Section 9.03, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction or purchase of a specified capital improvement upon or to the Community Area, and the necessary fixtures and personal Property related thereto; provided, however, that, except for special assessments which shall not exceed in any one (1) year the sum of Five Hundred Dollars (\$500.00) per assessed Dwelling or Lot, any such special assessment shall first be approved at a meeting of the Members by the affirmative votes of Members entitled to cast at least sixty-seven percent (67%) of all votes cast at a meeting called and held in accordance with the provisions of Section 9.05. The provisions of this Section 9.04 shall not limit the power of the Board, without such prior approval, to levy assessments to reconstruct, replace or restore any portion of the Community Area. The Board shall segregate and maintain a special reserve account (the "Master Fund") to be used solely to make capital expenditures in connection with the Community Area. Notwithstanding anything contained herein to the contrary, the Declarant shall not be responsible for the payment of any special assessments or contributions. The Developer with regard to any portion of the Property shall have the same rights and obligations as the Declarant as contained in this Section 9.04 with regard to any Lots owned or controlled by such Developer.

9.05 Specific Assessments. Any other expenses benefiting less than all of the Lots and/or Dwellings shall be specifically assessed equitably among all of the Lots and/or Dwellings that benefited. Any other expense occasioned by the conduct of less than all of those entitled to occupy the Lots and/or Dwellings or by occupants, licensees or invitees of any such Lot and/or Dwelling shall be specifically

assessed against the Lot and/or Dwelling, conduct of any occupant, licensee, or invitee of which occasioned any such expense.

9.06 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing any special assessments requiring approval pursuant to Section 9.04 hereof shall be sent to all Members not less than thirty (30) 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 at least sixty percent (60%) of all the votes shall constitute a quorum; provided, that if Members entitled to cast sixty percent (60%) of all votes do not attend, a second meeting may be called with the same notice requirements as herein provided, except that the quorum therefor shall be reduced to Members entitled to cast thirty percent (30%) of all votes.

9.07 Allocation of Assessments Among Members. Assessments for Common Expenses attributable to the Community Areas shall be allocated equally among the Members by apportioning to each Member an amount equal to that proportion of the total assessment which the number of Unit Memberships held by such Member bears to the total number of Unit Memberships in the Association.

9.08 Payment of Assessments.

(a) Each such Member shall pay the assessment levied by the Association to the Association upon demand.

(b) Upon written demand of an Owner or a Mortgagee at any time, the Association shall furnish such Owner or Mortgagee a written dated 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 Dwelling or Lot. Such Certificate shall be conclusive evidence of payment of any assessments theretofore levied and not stated therein as unpaid.

(c) The Declarant or Board may provide that the assessments may be paid in full the first day of the calendar year until otherwise provided.

9.09 Nonpayment of Assessments.

(a) Any installment of an assessment which is not paid to the Association within fifteen (15) days after the due date shall be delinquent and a late charge of Twenty-Five Dollars (\$25.00) shall be added to it. The assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum and the Association may bring an action against the Member personally obligated to pay assessments and recover 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 enforce and foreclose any lien it has or which may exist for its benefit.

(b) No Member shall be relieved of personal liability for the assessments and for other amounts due as provided herein by nonuser of the Community Area or abandonment or transfer of Ownership of his Dwelling or Lot, provided that upon transfer of Ownership of a Dwelling or Lot, the transferor shall not be responsible for assessments accruing after the date of transfer.

(c) The lien of the assessments provided for in Section 9.01 hereof shall be subordinate to the lien of any first mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the earlier of the date the holder of said mortgage takes possession of the Dwelling or Lot, accepts a conveyance of any interest in the Dwelling or Lot or has a receiver appointed in a suit to foreclose his lien. Such taking of possession, conveyance or appointment shall not relieve the holder of said mortgage from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. Except for the foregoing, the lien for assessments provided for in Section 9.01 shall not be affected by any sale or transfer of a Dwelling or Lot.

9.10 Closing Costs/Working Capital.

(a) At the initial closing of a Dwelling, the purchaser shall assume purchaser's prorata share of the assessment attributable to the Dwelling for the assessment period during which the closing occurs.

(b) At the initial closing of a Dwelling, the purchaser shall pay a working capital fee in an amount equal to one (1) time the quarterly assessment for the Estates Neighborhood as determined by the Association. Said working capital fee is nonrefundable and is not a pre-payment of monthly assessments.

(c) At the initial closing of a Dwelling, the purchaser shall pay a community working capital fee in an amount equal to one (1) times the yearly assessment for the Community and Community Areas as determined by the Association. Said working capital fee is non-refundable and is not a pre-payment of monthly assessments.

(d) At the initial closing of a Dwelling, the purchaser shall pay two (2) monthly assessments for the Estates as a prepayment for two (2) months assessments.

ARTICLE X
USE RESTRICTIONS

10.01 Use of Lots and Dwellings. Except as permitted by Section 10.03 hereof, each Lot and Dwelling shall be used for residential purposes only, for single-family occupancy and no trade or business of any kind may be carried on therein, except as provided for by ordinance by the Town, if any. No more than one (1) Dwelling shall be located on any Lot, except for those Lots upon which multi-family structures are constructed. The use of a portion of a Dwelling as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic. The use of a Dwelling or a portion thereof for business meetings, entertainment, or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic.

10.02 Fences or Remodeling. The installation of any type of fencing and any remodeling or additions to Dwellings requires a building permit from the Town prior to construction.

10.03 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Community Area, and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 10.03 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

10.04 Dwelling Height. No Dwelling shall contain more than two stories, nor shall any such Dwelling have a building height in excess of thirty (30) feet.

10.05 Building and Lot Quality.

(a) General. Every Dwelling shall be located and in accordance with the applicable governmental building and zoning codes and with such additional specifications and standards as may be required by the Architectural Control Committee after all construction plans and specifications (including, but not limited to those for grading and site work, excavation, and specifications showing the nature, kind, shape, heights, materials, color scheme, location, elevations and approximate cost of all Dwellings), along with a staked survey (showing the elevations of all corners of the Lot), have been submitted to, and approved in advance in writing by, the Architectural Control Committee.

(b) All 1-story residential Dwellings shall have Living Space of 1,900 square feet, with an attached garage which shall not count as square feet, except by special variance granted by the Architectural Control Committee.

(c) All 2-story Dwellings shall have Living Space of 2,400 square feet, with an attached garage which shall not count as square feet, except by special variance granted by the Architectural Control Committee.

(d) Roofs. All roofs on the Dwellings shall have a minimum pitch of five inches (5") of height to twelve inches (12") of run.

(e) Driveways. All driveways must be constructed of concrete except by special variance granted by the Architectural Control Committee.

(f) Sidewalks. Sidewalks are to be installed at the Lot owner's expense.

(g) Landscape. Each front yard shall have a minimum of four shrubs. Each Lot shall have two (2) 2-inch minimum diameter trees planted in the front yard of each Dwelling. Each front yard shall be landscaped with sod grass. Each side yard of a corner lot adjacent to the street shall also be landscaped with sod grass. Each side yard (except that of a corner lot) and backyard shall be landscaped with seed or sod grass. Each Owner, who has not commenced the construction of a residential structure on the Owner's Lot within six (6) months after the date of

conveyance of title to the Lot to such Owner, shall clear, till and seed the Lot, and thereafter shall keep the Lot mowed and trimmed in a manner as required by the ordinances of the County except by special variance granted by the Architectural Control Committee. Notwithstanding any other provision herein to the contrary, the sod, seeding and landscaping shall be installed upon the earlier of (i) eight (8) months after issuance of a building permit for the Dwelling, subject to extensions only as made necessary by the weather, or (ii) thirty (30) days after the date of occupancy, subject to extensions only as made necessary by the weather. Any failure to complete the sod, seeding and landscaping will result in a One Hundred (\$100.00) Dollar per day fine that can be assessed by the Association against the Lot or Dwelling.

(h) Garage. All Dwellings shall have an attached garage which will house a minimum of two (2) standard size automobiles and shall be used only by the Owners, occupants, or their guests, and shall not be used for rental purposes.

(i) Sheds. No storage sheds are permitted on any Lot or Dwelling within the Development

(j) Basketball Equipment. Portable basketball equipment and in-ground installation or attaching to any residential structure of basketball equipment is strictly prohibited.

(k) Pools. No above ground swimming pool shall be permitted on any Lot. All in-ground pools and related improvements shall comply with local ordinances. Notwithstanding anything in this Declaration to the contrary, all in-ground pools shall be fenced in, utilizing fencing as permitted by this Declaration that is placed immediately adjacent to the rear and side yard lot lines. In-ground pools may eliminate the fence requirement if the pool includes a state or municipal approved safety cover, if allowed by local ordinance. The plans for any inground swimming pools and fences shall be approved in writing by the Architectural Control Committee prior to any installation. The site plan with improvement drawings shall be provided to the Architectural Control Committee at least thirty (30) days prior to the intended commencement of work. A building permit shall be obtained from the County Building Department prior to any installation.

(l) Decks and Patios. Each Dwelling shall have either a (i) a deck or (ii) a patio on the rear elevation of the Dwelling. Each Owner shall complete the deck or patio within nine (9) months of the later of: (i) after the Owner closes on the Dwelling or Lot; or (ii) issuance of a certificate of occupancy for a Dwelling. The Architectural Control Committee may allow the installation of a deck or patio on a side elevation if necessary to accommodate for the characteristics of the Lot, but such variance shall be at the sole discretion of the Architectural Control Committee. Each Owner shall obtain a building permit from the Town to complete the deck or patio, and the minimum size shall be 10' x 10'. Decks may be constructed of composite material, cedar, or treated lumber. If the deck is constructed of cedar or treated lumber, cedar or treated lumber shall be stained in appropriate earth tone within thirty (30) days of installation and shall be re-stained at least every five (5) years thereafter. Railings and walls shall be constructed of appropriate materials and in compliance of all building codes. Patios may be constructed of concrete or brick pavers, both of which are installed upon appropriate base material. Owners shall not use the rear deck or patio for storage of any personal property items, toys, or lawn equipment, but Owners are allowed to have grills and patio furniture along with planters and other similar accessories on the deck or patio.

(m) Outdoor Structures. Pergolas, gazebos, or similar outdoor structures are prohibited.

10.06 Fencing requirements. Fencing shall be submitted to the Architectural Control Committee for approval, prior to any construction. Any fencing installed by an Owner shall be constructed pursuant to Exhibit E and only constructed around the side and rear yards of any Lot in the Development, and not within the front yard setback or a setback adjacent to a road, and subject to any other requirements of the Architectural Control Committee. Any fence installed on any Lots that are adjacent to town parks and ponds within the Community Area shall be a maximum of four (4') feet tall and shall be an ornamental fence, as specified by the Architectural Control Committee and by the Association. See Section 10.05 (k) Pools for specific fencing requirements, if applicable. The requirement is to have a white or tan polyvinyl fence or black powder coated aluminum fence. The Architectural Control Committee (ACC) may grant variances to Owners upon request, but in the sole discretion of the ACC.

Lots subject to a maximum of four (4') feet tall, ornamental fence are as follows: xx

Invisible pet fencing is permitted in the rear yard. Invisible fencing cannot extend past the front building line. On a corner lot, it cannot extend past the front or side front building line

10.07 Architectural Control. No building, wall, improvement or other structure shall be commenced, erected or maintained on the Property and no exterior addition, change or alteration shall be made until the plans and specifications, plot lay-out, exterior elevations and landscaping which shall show the nature, kind, shape, height, materials, and location of the improvement to be made shall have been submitted to and approved in writing as to the harmony of external design and location in relationship to the surrounding structures, topography, and Lot lines by the Architectural Control Committee appointed by the Board of Directors of the Association. In addition, each Owner intending to build shall submit a resume as to the experience and financial responsibility of the proposed contractor who is to perform the work. This provision shall not apply to any construction or improvement made by the Declarant in connection with the development of the Property.

Neither the Association, nor the Architectural Control Committee, nor any member thereof, shall be liable for any damage, loss or prejudice suffered or claimed by any Owner or contractor who submits such plan on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and (e) the development of any property within the Properties. Any person submitting plans to the Architectural Control Committee shall hold the Association, the Architectural Control Committee, or any member thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

10.08 Signs. An Owner may display only temporary but tasteful "For Sale" signs, not to exceed six (6) square feet. In addition, a political sign may be displayed upon the Owner's Dwelling or Lot beginning thirty (30) days before the date of an election and ending five (5) days after the date of an election to which the political sign relates. A political sign refers only to a sign advocating: (i) the election or defeat of one or more candidates for nomination or election to a public office; (ii) support for or opposition to a political party or a political party's candidates, or (iii) the approval or disapproval of a public question. Further, a political sign may not be larger than what is commonly displayed during election campaigns within residential yards. Further, an Owner may not display more than a reasonable number of signs, and the Community Association determines that a reasonable number of signs are three (3). A political sign

may be displayed in the window of the Owner's Dwelling or Lot or on the grounds that is part of the real estate that comprises the Owner's Dwelling or Lot. The Association may remove any signs considered in violation of this covenant.

10.09 Antennas, Satellite Dishes. Radio, television, transmission and reception antenna may not be installed on the roof of a Dwelling. All antennas must be installed within the attic of a Dwelling unless prior written approval is obtained from the Architectural Control Committee. Satellite dishes may not be installed on the front elevation or front portion on the roof of a Dwelling to be visible from the adjacent road and sidewalks, and satellite dishes may not be installed in the front yard of a Lot. Satellite dishes less than one meter in diameter may be installed on the rear elevation to the extent not visible from the adjacent road and sidewalks. Satellite dishes less than one meter in diameter may be discreetly installed in the ground in a rear yard, in the rear portion of the side yard, to the rear elevation of the Dwelling or to the side elevations of the Dwelling (closer to the rear elevation than the front elevation). Notwithstanding the foregoing, satellite dish installation is subject to the ordinances of the County and FCC regulations.

10.10 Appearance.

(a) All equipment, garbage cans, woodpiles, or storage piles shall be kept, screened or stored so as to conceal them from the view of neighboring Lots and streets. All rubbish, trash or garbage shall be regularly removed from all Lots and shall not be allowed to accumulate on the Lots within the Development.

(b) No Owner shall burn or permit the burning of garbage or other refuse. No Owner, or builder or contractor for such Owner, shall dump construction debris, dirt, sand, trash or rubbish on any Lot, street or other area on the Development. Each Owner shall be responsible for the appropriate removal of all such construction debris, dirt, sand, trash and rubbish, Declarant shall not have any liability or responsibility therefor.

(c) Trash receptacles shall only be left out on days of pickup (or the evening before) and shall promptly be returned to a place out of view after pick up.

10.11 Existing Trees. Owners shall not remove any existing, living (healthy) trees on the Lots without the prior written permission of the Architectural Control Committee. If an Owner wants to remove an existing tree on their Lot, he or she shall give prior written notice to the Architectural Control Committee, who shall approve or disapprove the request within a reasonable time. In the event of an emergency that threatens life or property, the Owner may take appropriate action without notice to the Architectural Control Committee, provided that it gives notice to the Architectural Control Committee as soon as possible of its actions and provides to the Architectural Control Committee sufficient evidence of the emergency justifying such action without notice. A replacement ratio may apply for any trees that are removed, meaning the Architectural Control Committee may require two trees be installed for removal of the existing.

10.12 Mailboxes. All mailboxes shall be in conformity with the quality and style and location requirements of the Architectural Review Committee. Mailboxes with excessive patterns are prohibited. No novelty mailboxes in the shape of fish, birds, dogs, cats, animals, planes, trains, vehicles, sports equipment, balls, houses, or other objects or themes shall be permitted.

10.13 Parking restrictions. No tractor, motor home, trailer, boat, camper, etc. shall be permitted to be parked on any Lot or anywhere on the Development for more than forty-eight (48) hours unless in a garage. It is the intent of the Declarant to restrict parking of the above-mentioned vehicles to the garages upon the Lots and to further restrict vehicular parking on or upon the Development to the automobiles regularly used by the Owners. No Owner shall repair or restore any vehicle of any kind upon any Lot, street, alley, right of way or other thoroughfare except for emergency repairs and except within enclosed garages.

10.14 Renting or Leasing. Notwithstanding anything to the contrary herein, at least eighty five (85%) percent of the Dwellings shall be Owner occupied. Owner occupancy includes ownership by an immediate family member of at least one person residing in the Dwelling or a trust of which the occupant is settlor, grantor, trustee or beneficiary. As long as one Dwelling satisfies the definition of Owner occupancy, the adjacent Dwelling may be used to support independent living arrangements for the residents in the other Dwelling. No renting or leasing of the Dwellings to a third party for income shall be permitted except in the case of (i) hardship as defined in this paragraph and (ii) acquisition of a Dwelling by a lender through foreclosure, deed in lieu of foreclosure or similar proceedings, which in both cases the Owner shall be entitled to lease the Dwelling for residential purposes. Hardship is defined as a personal or financial situation that without allowing renting or leasing of a Dwelling significant financial harm shall occur to the Owner. The Owner must inform the Association of the specific circumstances of the hardship, and provide the Association with a copy of the lease. All lease or rental agreements must be in writing, and they shall be immediately provided to the Association. Dwellings shall not be leased for an initial term of less than one year, nor for less than thirty (30) days for any term thereafter.

10.15 Erosion Control. Owners shall be responsible for complying with all laws and regulations with respect to erosion control during construction on the Development, and shall be obligated to comply with all requirements or recommendations of the Division of Soil Conservation of the Indiana Department of Resources, regarding the installation and maintenance of erosion/sediment control facilities and practices during the construction period on the Development. Without in any way limiting the generality of the foregoing, the Owner shall be obligated for the installation and maintenance of (a) perimeter erosion and sediment controls, (b) curb inlet protection, (c) drop inlet protection, (d) temporary downspout extenders, and (e) gravel driveways/entrances after the completion of the foundation, from the public street curb to the foundation. The

gravel driveway/entrance shall be installed at a minimum twelve foot (12') width, over a stable subgrade with six inches (6") of coarse aggregate (INDOT CA NO. 2) adding stone as needed from time to time to maintain a six inch (6") clean depth.

10.16 Responsibilities of the Owner During Construction. The Owner is responsible for the removal of any and all debris including but not limited to excess soil from excavation and construction materials on the Lot. No soil or debris shall be allowed on any roads or streets at any time. Every Owner shall require its builder to comply with these requirements which shall be specified in the contract. If the Owner or builder does not correct any of the above conditions, the Declarant, after notification, may correct the condition and charge the Owner fair market value for the work performed.

10.17 Approval Prior to Construction. No Dwelling or structure shall be commenced, erected, or maintained on any of the Property until the plans and specifications have been submitted to and approved by the Architectural Control Committee as provided in this Article. Declarant is not required to obtain approval from the Architectural Control Committee.

10.18 Fines for Violations of Declaration. The Associations Board shall determine violations of Article X and Article XI. The Owners and Members consent to the Board making such determination in the assessment of a Fifty (\$50.00) Dollar per day fine for violations of Article X and Article XI, and the Owners and Members consent to the Association recording lien against the Owner or Member's Lot and/or Dwelling to collect such fines. The following procedure shall govern the imposition of fines: (i) the Association shall give written notice of violation of Article X, XI or this Declaration; (ii) if the Owner or Member does not respond within ten (10) days of the receipt of the notice of violation, the Owner or Member shall deemed to have agreed with such determination; (iii) if the Owner or Member objects to such notice of violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of Article X, Article XI or this Declaration within ten (10) days of receipt of the notice of violation; (iv) the Board shall consider all written evidence submitted by the Owner or Member and shall make a written final determination thereon within reasonable time after receipt of the Owners or Member's written material; (v) the Association through the Board of directors shall respond to an Owner's or Member's objection, in writing, with a final determination on the issues; and (vi) if the Owner or Member does not adhere to the Association's initial determination or final determination, if applicable, the Association shall be entitled to levy a fine against the Owner or Member, not exceeding Fifty (\$50.00) Dollars per day for as long as the violation of Article X, Article XI or this Declaration continues.

10.19 Registered Sex Offenders. No person may occupy a Dwelling, whether as Owner, Occupant, Lessee, or member of the household, licensee or regular guest whose name is on any state or federal sex offender registry. If this provision is violated, the Association shall give notice to the Owner that such occupancy is in violation of this paragraph. The Owner must give the

Association adequate assurances that the violation has been cured and that all future occupancies shall comply with this paragraph. If the violation of this paragraph continues after notice by the Association, the Association shall have the following remedies: (i) assessing a fine of One Hundred Dollars (\$100.00) per day after it has provided notice and an opportunity to cure against the Owner which lien shall be paid by the Owner and the Association can lien the Dwelling to recover the fine and proceed with foreclosure on the lien, if necessary; (ii) the Association may enforce this paragraph by seeking injunctive relief from a court of competent jurisdiction with all parties acknowledging that there is no adequate remedy at law, and the Association will suffer irreparable harm; or (iii) the Association may purchase the Dwelling at a price equal to ninety percent (90%) of the price that the Owner paid to purchase the Dwelling with the right to enforce this option by obtaining appropriate relief from court of competent jurisdiction and the Owner shall be responsible for all legal costs and expenses in enforcing the repurchase option, and the Association shall resell the Dwelling in a commercially reasonable manner and any net proceeds realized by the Association after paying and recovering all Association costs and expenses shall then be paid to the previous Owner.

ARTICLE XI **RULE MAKING**

11.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Community Area and facilities located thereon. In particular but without limitation, the Board may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board, be environmentally hazardous to any wetland or other areas. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation is specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant shall have the right to appoint the Board pursuant to Section 4.04 hereof.

11.02 Authority and Enforcement. Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guest, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the recreational facilities located in the Community Area, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owner or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

11.03 Procedure. Except with respect to the failure of an Owner to pay assessments, the Board shall not impose a fine exceeding \$50.00 per day, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director, or other individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

11.04 Fine Assessed by Association. Notwithstanding any other provision herein to the contrary, the Board may assess a fine not in excess of Fifty (\$50.00) Dollar per day for violations of the Declaration and the Rules and Regulations of the Association, and the Association may record a lien against the Owners, Lot and/or Dwelling to collect such fines. The Association shall be entitled to impose such a fine provided: (i) the Association gives written notice of the violation to the Owner; and (ii) the Owner does

not respond within ten (10) days of receipt of the notice of violation. If the Owner objects to such notice of violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of the Declaration and the Rules and Regulations within ten (10) days of receipt of the notice of violation, and thereafter the Board shall consider all written evidence and shall make a final determination thereon within fifteen (15) days of receipt of the Owner's written material. The Association shall respond to an Owner's objection in writing with a final determination on the issue. If the Owner does not adhere to the Association's final determination, the Association shall be entitled to levy a fine against the Owner not exceeding Fifty Dollars (\$50.00) per day. The Association may impose a fine in excess of the above amount if it follows the provisions of Article XI, Section 11.03.

ARTICLE XII **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.01 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Dwelling on which there is a first Mortgage held, insured, or guaranteed but such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Dwelling subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Dwelling of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

12.02 Amendments to Documents.

(a) The consent of Members representing at least sixty-seven (67%) percent of the votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the eligible holders of first Mortgages on sixty-seven (67%) percent of the Dwellings subject to a Mortgage held by an eligible holder, shall be required to terminate the Association for reasons other than substantial destruction or condemnation. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the

approval of the Members as specified above and the eligible holders of first Mortgages on fifty-one (51%) percent of the Dwellings subject to Mortgages held by such eligible holders.

(b) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first Mortgages on Dwellings to which at least fifty-one (51%) percent of the Dwellings subject to Mortgages held by such eligible holders are allocated.

(c) The consent of Members representing at least sixty-seven (67%) percent of the votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of eligible holders of first Mortgages on fifty-one (51%) percent of the Dwellings subject to a Mortgage held by an eligible holder, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Community Area;
- (iv) insurance or fidelity bonds;
- (v) rights to convey the Community Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association (other than by Declarant as provided in Article II of this Declaration);
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Dwelling;
- (xi) establishment of self-management by the Association where professional management has been required by an eligible holder;
or

- (xii) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders; guarantors, or insurers of first Mortgages on Dwellings.

12.03 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Community Area which the Association owns, directly or indirectly, except as otherwise provided herein;
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Dwelling (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Property regarding assessments shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the maintenance of Dwellings and of the Community Area;
- (d) fail to maintain insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Community Area losses for other than the repair, replacement, or reconstruction of such Property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Community Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

12.04 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Dwelling in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Community Area.

12.05 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Dwelling.

12.06 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which negate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes. Copies of any amendments to this Declaration, except those enacted by the Declarant, shall be furnished to the Owners.

12.07 Failure of Mortgagee to Respond. Any Mortgagee who receives notice of and a written request from the Board to respond or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, with a return receipt requested.

ARTICLE XIII **GENERAL PROVISIONS**

13.01 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any member or Members of the Board and any officer or officers of the Association as provided by and for the term set forth in Section 4.04 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove trustees and officers of the Association in accordance with the foregoing provisions of this Section 13.01 and the provisions of Section 4.04. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 4.04 and this Section 13.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

13.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Office of the Recorder, without the approval of any Owner or Mortgagee; provided, however, that with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, or as otherwise provided in Section 13.03 hereof, in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 13.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself.

13.03 Special Amendments. Anything herein to the contrary notwithstanding, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) 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, the Federal Housing Administration, the Veteran's Administration, 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, (ii) to induce any of such agencies or entities to make, purchase, sell, insure,

guarantee or otherwise deal with first mortgages covering Dwellings, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, lease, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the date Declarant no longer has the right to appoint all directors of the Board pursuant to Section 4.06 hereof.

13.04 Litigation. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned), and seventy-five percent (75%) of Owners (other than the builder) of the individual Lots have given their prior written approval, the Owners shall not be entitled to commence any class-action or other collective action against the Declarant, or any other persons acting on behalf of or in association with Declarant in connection with the development of the Property or this Declaration. Any action against the Declarant shall proceed in accordance with Section 13.05 of this Declaration. An Owner, Member and the Association agree to give Declarant sixty (60) days prior written notice of a claim to allow Declarant to investigate and cure if appropriate, before instituting any arbitration.

13.05 Arbitration. Excluding (a) any suit by the Association to collect Assessments under Article IX; (b) any suit by the Association to obtain a temporary restraining order to enforce the provisions of Article X; and (c) arbitration conducted by the Board under Article X, any and all claims, disputes and controversies by and between the Association, an Owner, Declarant, Managing Agent or any other party connected in any way to the Association, or any combination of the foregoing, arising from or related to the Property, the Association, any improvements to the Property, the sale of any Dwelling or Lot on the Property, including, without limitation, any claim of breach of contract, negligence, negligent or intentional misrepresentation or non-disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of JAMS in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1

et seq.) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

13.06 Enforcement. Each Owner shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set both in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or for instituting an action to recover sums due, for damages and/or for injunctive relief and/or any other remedy available at law or in equity such actions to be maintainable by Declarant, the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction or other equitable action to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Association, however long continued.

13.07 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial twenty (20) year period or the last year of any ten (10) year renewal period, eighty-five percent (85%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be duly filed, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by

acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation or transfer, to the covenants, conditions, restrictions, easements, rights, benefits and privileges of every character contained herein, shall be deemed and taken to be appurtenant to and covenants running with such Property, and shall be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though the provisions of this Declaration were fully recited and set forth in their entirety in such documents.

13.08 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the President of the United States and the Governor of Indiana.

13.09 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board, will best affect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance, building codes or other regulations which are less restrictive. The effective date of this Declaration shall be the date of its filing for record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

13.10 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any Property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

13.12 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

13.13 No Trespass. Whenever the Association or Declarant and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

13.14 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to

such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Streamside Community Association, Inc.
8051 Wicker Avenue, Suite A
St. John, Indiana 46373

or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. All notices are deemed delivered when delivered by hand or when deposited in the United States mail.

13.15 Land Trust. In the event title to a Lot or Dwelling is held by a land trust under which all powers of management, operation and control remain vested in the trust beneficiaries, then the beneficiaries thereunder shall be considered Owners for all purposes hereunder and they shall be responsible for any obligation created under this Declaration against such Lot or Dwelling. No claim shall be made against any such title holder trustee personally for any claim or obligation created hereunder and the trustee shall not be obligated to sequester funds or trust Property to apply in whole or in part against any such obligation, but the amount thereof shall continue to be a charge or lien upon the Lot or Dwelling notwithstanding any transfers of beneficial interest or in the title to such Lot or Dwelling. By directing said trustee to take title to said Lot or Dwelling, the beneficiaries agree to be bound by the provisions of this Section 13.15 as permitted hereunder.

13.16 Declarant's Rights. All Declarant's Rights shall be mortgageable, pledgeable, assignable or transferable. The Declarant shall have the right to assign some or all of the Declarant Rights reserved or granted hereunder to Declarant, subject to the following:

(a) Declarant may assign to a Person which acquires title to a portion of the Property the non-exclusive right to exercise some or all of the Declarant Rights, subject to such terms, conditions and limitations as the Declarant shall deem appropriate, in their discretion.

(b) If Declarant conveys all of the Additional Property owned by it to a Person, then the Declarant shall no longer have the right to exercise any Declarant Rights and the person which acquires such portions of the Additional Property from Declarant may become the successor to the Declarant and, if so, shall have the right to exercise all Declarant Rights hereunder, subject to any assignments previously made by the Declarant permitted hereunder.

(c) Any Declarant Rights may be collaterally assigned by the Declarant to a lender which makes a development or construction loan to Declarant with respect to a portion of the Additional Property.

(d) Except as provided in Section 13.16 hereof, no transfer of Declarant rights shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Office of the Recorder.

13.17 Disclaimer of Other Entities. Owner and the Association acknowledge and understand that their relationship is with the Declarant, pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Owner and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant, and Owner and the Association waive and release any such claims, if any.

13.18 Disclaimer of All Warranties. Declarant hereby disclaims and excludes any and all warranties, expressed or implied (including, without limitation, any implied warranty of habitability, merchantability, quality or fitness for particular purpose), with respect to the Property, Community Areas, the Lots and the Dwellings. The Association and any Owner knowingly agree to waive any and all rights that they may have pursuant to the implied warranty of habitability. The Association and Owners acknowledge and agree that the sole warranties that apply to the Property, Community Areas, Lots and Dwellings are solely contained within the purchase agreement for the acquisition of the Lot or Dwelling from the seller thereof.

IN WITNESS WHEREOF, _____ has caused its name to be signed to these presents by its _____, this ____ day of _____, 2022.

By: _____
Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

I, _____, a Notary Public in and for said City and State do hereby certify that _____ appeared before me this day and acknowledged and that by authority duly given and as the act of _____, the foregoing instrument was signed in its name by its _____.

WITNESS my hand and official seal, this ____ day of _____, 2022.

Notary Public

My Commission Expires: _____
My County of Residence: _____

AFFIRMATION

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

This Instrument Prepared by and after Recording Return to:
Greg A. Bower, Esq. (#16368-53), Koransky, Bower & Poracky, PC
425 Joliet Street, Suite 425, Dyer, IN 46311

EXHIBIT A

Legal Description

THE EAST HALF OF THE NORTHEAST QUARTER, EXCEPT THE SOUTH 1265.15 FEET AND EXCEPT THE NORTH 380 FEET OF THE EAST 450 FEET AND EXCEPT THE SOUTH 140 FEET OF THE NORTH 520 FEET OF THE EAST 311.14 FEET OF SECTION 7, TOWNSHIP 34 NORTH, RANGE 9 WEST OF THE 2ND P.M., IN LAKE COUNTY, IN.

EXHIBIT B
Additional Property

EXHIBIT C

BY-LAWS

OF

STREAMSIDE ESTATES ASSOCIATION, INC.

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BY-LAWS
OF
STREAMSIDE ESTATES ASSOCIATION, INC.

ARTICLE I
NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS

Section 1. Name. The name of the Association shall be Streamside Estates Association, Inc. (hereinafter referred to as the "Association").

Section 2. Principal Office The principal office of the Association shall be located initially at the principal business location of Declarant, and thereafter such location as determined by the Board of Directors. The Association may have such offices, either within or without the State of Indiana, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-laws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Streamside Estates (said Declarations as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

ARTICLE II
ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Membership. The Association shall have one (1) class of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either in the Project or as convenient thereto as possible and practical.

Section 3. Annual Meetings The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors.

Section 4. Special Meetings The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by at least ten percent (10 %) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings Written or printed notice stating the place, day and hour of any

meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) days nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed a waiver by such member of notice at the time, date and place thereof, unless such Member specifically objects to a lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to vote.

Section 7. Adjournment of Meetings If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least twenty-five (25 %) percent of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxy. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot or Dwelling or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy.

Section 10. Majority. As used in these By-laws, the term "majority" shall mean those votes of Members, or other group as the context may indicate, totaling more than fifty percent (50%) of the total number of the appropriate class of Members entitled to vote on same.

Section 11. Quorum. Except as otherwise provided in these By-laws or in the Declaration, the presence in person or by proxy of one-fourth (1/4) of each class of the Members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action without a Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

ARTICLE III

BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

Section 1. Governing Body: Composition The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article III, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time.

Section 2. Directors During Declarant Control The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant until such time as is specified in the Declaration, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be owners or residents in the project. After the period of Declarant appointment, all Directors must be Members of the Association.

Section 3. Number of Directors. The number of Directors in the Association shall be not less than three (3) nor more than five (5), as the Board of Directors may from time to time determine by resolution. The initial Board of Directors shall consist of three (3) members and are identified in the minutes of the first meeting of the Board.

Section 4. Appointment of Directors. Except with respect to Directors selected by the Declarant, appointment to the Board of Directors shall be made by Members.

Section 5. Election and Term of Office. Notwithstanding any other provision contained herein: At the first annual meeting of the membership after the termination of the Declarant's right to select directors and at each annual meeting of the membership thereafter, Directors shall be elected. All Directors shall be elected at-large. All Members of the Association shall vote upon the election of Directors. As long as there are three (3) Directors, the term of one (1) Director shall be fixed at one (1) year, and the term of one (1) Director shall be fixed at two (2) years, and the term of one (1) Director shall be fixed at three (3) years. The members of the Board of Directors shall hold office until their respective successors have been elected by the Association.

Section 6. Removal of Directors and Vacancies. Unless the entire Board is removed from office by the vote of the Association Members, an individual Director shall not be removed prior to the expiration of his or her term of office, except by the vote of a majority of Members.

In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 7. Voting Procedure for Directors. The first election of the Board shall be conducted at the first meeting of the Association after the period of Declarant control has expired. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

B. Meetings.

Section 8. Organizational Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meetings of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (1) a quorum is present, and (2) either before or after the meeting each of the Directors not present signs a written waiver or notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a

majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association at a regular or special meeting of the Association.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 15. Open Meeting. All meetings of the Board of Directors shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

Section 16. Executive Sessions. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 17. Action without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent is in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as set forth by the Declaration, Articles of Incorporation or these By-laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the Managing Agent or Manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making Assessments to defray the Common Expenses, establishing means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment, provided as otherwise determined by the Board of Directors, the annual Assessment for the proportionate share of the Common Expenses shall be payable yearly in advance on the first day of the year for said year;

(c) providing for the operation, care, upkeep, and maintenance of any Community Area;

(d) designating, hiring and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Association, its property, and any Community Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties;

(e) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions and improvements to or alterations of any Community Area in accordance with the other provisions of the Declaration and these By-laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-laws, and the Rules and Regulations adopted by it and bringing any proceeds, which may be instituted on behalf of or against the Owners of the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners;

(m) make available to any prospective purchaser of a Lot or Dwelling, any Owner of a Lot or Dwelling, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Lot or Dwelling, current copies of the Declaration, the Articles of Incorporation, the By-laws, Rules and Regulations, and all other books, records and financial statements of the Association; and

(n) permit utility suppliers to use portions of any Community Area reasonably necessary to the

ongoing development or operation of the Project.

Section 19. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-laws, other than the powers set forth in subparagraphs (a), (b), (d), (f), (g) and (i) of Section 18 of this Article III. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board of resolution specifically determines otherwise:

(a) cash basis accounting shall be employed;

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of Twenty-five (\$25.00) Dollars and under;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and

(f) commencing at the end of the month in which the first Lot or Dwelling is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an Income and Expense Statement reflecting all income and expense activity for the preceding three (3) months on a cash basis:

(ii) a Balance Sheet as of the last day of the Association's fiscal year and an Operating Statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year.

(iii) a Delinquency Report listing all Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of Assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which

shall be considered to be delinquent on the fifteenth (15th) day of each month; and

(iv) an annual report consisting of at least the following shall be distributed within one hundred twenty (120) days after the closing of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) statement of changes in financial position for the fiscal year. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without an audit from the books and records of the Association.

ARTICLE IV **OFFICERS**

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, excepting the offices of President and Vice President. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office and Vacancy. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by the President or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE V **COMMITTEES**

Committees to perform such tasks and to serve for such periods as may be designated by a

resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

ARTICLE VI **MISCELLANEOUS**

Section 1. Fiscal Year. The initial fiscal year of the Association shall be set by resolution of the Board of Directors.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of the Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration or these By-laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Indiana Law, the provisions of Indiana law, the Declaration, the Articles of Incorporation, and the By-laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-laws, membership register, books of account, and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Project as the Board shall prescribe.

(b) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-laws, all notices, demands, bills, statements or other communications under these By-laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Lot or Dwelling of such Owner; or

(b) if to the Association, the Board of Directors, or the Managing Agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this Section.

Section 6. Amendment. Declarant may amend the By-laws in accordance with the Declaration. These By-laws may be amended otherwise only by the affirmative vote (in person or by proxy) or written consent of Members representing two-thirds (2/3) of the total votes of the Association (not a majority of a quorum).

EXHIBIT D
Community Area

EXHIBIT E
Fence Requirements

The styles of fence shown below are allowed around the side and rear yard of lots that are not adjacent to town parks, Community Area parks or ponds. The requirement is to have a tan or white polyvinyl fence or black powder coated aluminum fence. The three styles of polyvinyl fence allowed here are the shadow box (board on board) style (Figure A), the ornamental style (Figure B), and the tongue and groove style (Figure C). The style of the black powder coated aluminum fence is shown in Figure D. The fence cannot exceed six feet in height and cannot be installed in the front yard setback or any setback adjacent to the road.



Figure A



Figure B



Figure C



Figure D

The ornamental style fence is shown below. The fence is allowed around the side and rear yard of lots that are adjacent to town parks, Community Area parks and ponds. The requirement is to have a white or tan polyvinyl fence or black powder coated aluminum fence. The fence cannot exceed four feet in height and cannot be installed in the front yard setback or any setback adjacent to the road.



*Reference the Use Restrictions for additional fencing requirements and restrictions.

EXHIBIT F

RULES AND REGULATIONS

1. LOT AND DWELLING STANDARDS. No change in the exterior appearance of a Dwelling, or the quality of the construction of a Dwelling, can be changed in any way whatsoever without the prior approval of the Architectural Control Committee. The prohibition of this provision shall include, but not be limited to, the following:

a. The construction of any exterior addition to any Dwelling, or the construction of any temporary or permanent improvement or building on the lot on which the Dwelling is located.

b. The reconfiguration of any existing structure of a Dwelling in any manner whatsoever.

c. The use of any material on the exterior of any Dwelling or associated structures which is not identical to that which was provided as a part of the original construction, both in quality, color and other appearances. Exceptions to this rule may be made by the Architectural Control Committee, so long as the Architectural Control Committee shall make an affirmative determination that such shall be and remain visually compatible with and in harmony with the appearance of the other Dwellings.

d. The erection of aerials, antennas, clotheslines, awnings, or other similar items or devices, except within an enclosed private courtyard in such a manner that they are not visible from any ground level location from the exterior.

e. Storm doors and windows shall not be added to a Dwelling, except in accordance with written Association specifications.

f. The use of inappropriate window coverings when viewed from the exterior of the Dwelling, as determined by the Architectural Control Committee. Standard colored drapes and blinds are permitted.

g. The construction or placement of structures to house or restrain pets.

h. No permanent bird baths, bird feeders, decorative animals, sun globes, flags, flag poles, statues, figurines, additional fencing, fountains, signs, awnings, landscape lights, name plates, pavers, plaques, rocks, thermometers, wind chimes, wishing wells, decorative ironworks and decorative lawn sprinklers, either attached to a structure or placed in the lawn and landscaping, shall not be permitted until prior written approval of the Architectural Control Committee has been obtained.

i. The following items may be installed: (i) an address sign placed within the landscaping; (ii) one shepherds hook with a hanging flower pot; (iii) plants and potted plants in the landscape area, front porch or rear patio (iv) an American flag attached to the Dwelling may be displayed; (v) a bench or chairs may be placed on the front porch; (vi) a wreath may be displayed on the front door.

j. Rear patios may have acceptable patio furniture, umbrellas and grills, provided they are maintained in good condition

k. Holiday decorations may be installed one week before and after a holiday, with the exception of Christmas decorations which are permitted from Thanksgiving until one week after New Year's Day. Decorations shall be removed at all other times. Decorations must be moderate and tasteful, as determined by the Board.

In addition to the foregoing prohibitions, each Owner shall have an affirmative obligation to maintain and repair his and/or her Dwelling in such a manner as to maintain at all times the uniformity of appearance of such Dwelling with all others in the community.

2. ANIMALS AND CONTROL OF PETS.

a. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Dwelling; provided, however, dogs, cats or other household pets may be kept, not to exceed a total of two (2) such animals, provided they are not kept, bred or maintained for any commercial purposes. The foregoing limitation on the number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet to prior to the time that the animals in such litter are three (3) months old. If any animal may, in the sole discretion of the Board of Directors or its designated committee, make an objectionable amount of noise, endanger the health of the occupants of other Dwellings, or otherwise constitute a nuisance or inconvenience to the Owner of other Dwellings, such animal shall be removed upon the request of the Board of Directors or its designated committee. If the Owner of such animal fails or refuses to honor such request, the animal may be removed at the direction of the Board of Directors. An Owner's failure to remove fecal matter or other solid waste left in any common area by an animal owned by an occupant of such Owner's Dwelling (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above. The cost and expense of any removal of an animal under this Section shall be the sole responsibility of the Owner of the Dwelling where the animal was kept (or was brought by a guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association's demand for reimbursement, such cost and expense shall become part of the annual assessment against such Dwelling, and the amount of such cost or expense assessed against such Dwelling shall not be counted or considered in determining whether a maximum assessment has been made against such assessed Dwelling.

b. Control of Pets. Every person owning or having possession, charge, care, custody or control of any dog, cat or other uncaged pet shall keep such pet exclusively inside his Dwelling or inside the confines of such Owner's Dwelling; provided, however, that such pet may be outside of the Owner's Dwelling if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet from (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently, (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees, or (iii)

otherwise constituting a nuisance or inconvenience to the Owner(s) of any other Dwelling; all of the foregoing as determined by the Association. Any pet identified by the Association as a potentially dangerous animal constituting an unreasonable risk or threat to any other Owner or as to other Owners generally, whether or not such risk or threat is deemed immediate or imminent, or as to the family, guests or invitees of any Owner or other Owners generally, whether due to the type, kind or species of such animal, or its size, natural proclivities or inherent nature, or as a result, whether in whole or in part, of the known tendencies, habits, disposition or history of such animal, or as a result of the manner in which such animal generally is supervised and controlled by its owner, or for any combination of any of the foregoing reasons, shall be subject to such further restrictions or control as the Association may in its absolute discretion deem appropriate, which further restrictions or control may include, without limitation, any one or more of the following additional requirements: (a) constant restraint of the animal by means of a cage, chain, leash or other means deemed appropriate and approved by the Association at all times while such animal is outside an Owner's Dwelling, even while such animal is in the area of such Owner's Dwelling within a fence; (b) limitations on the time periods or durations that such animal is permitted to be outside of its Owner's Dwelling; (c) prohibiting the animal to be outside a Dwelling at any time without its Owner present; or (d) permanent removal of the animal from the Property.

3. RESPONSIBILITY FOR ASSESSMENTS AND COMPLIANCE WITH DECLARATION. The Owner is always responsible for Association Assessments, insurance deductibles or any other charge the Board of Directors may direct to the Dwellings, and the compliance by all Occupants (including tenants and subtenants) with the provisions of the Declaration, regardless of whether the Dwelling is occupied by the Owner or by an Occupant, and regardless of any agreement which such Owner may have with any such Occupant, tenant or subtenant.

OWNERS OBLIGATION TO PROVIDE INFORMATION TO THE ASSOCIATION. All Owners shall advise the Association in writing of the names, residence addresses (if different from that of the Dwelling owned) and telephone numbers of all Owners, Occupants and all tenants, subtenants and other occupants; and the name, business address and telephone numbers of all Mortgagees of record on the Dwelling owned, and all such information provided in accordance herewith shall be updated in writing by each Owner within fifteen (15) days, upon the request of the Board of Director