DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUMMERSET

THIS DECLARATION, made on the ______ day of November, 2006, by JUSTUS
HOMES, INC., an Indiana Corporation ("Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Hancock County,
Indiana, which is more particularly described in Exhibit A (hereafter "Real Estate") attached
hereto and by this reference, made a part hereof, upon which Declarant intends to develop a
residential subdivision;

WHEREAS, Declarant or its assignee may hereafter become the owner of and decide to
subject to the terms of the Declaration part or all of the Additional Real Estate (hereafter
defined); and

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate
together with such portions of the Additional Real Estate (hereafter defined) as have from time to
time been subjected to this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (as defined in
Article II below) in the Property, as they are held and shall be held, conveyed, hypothecated,
or encumbered, leased, rented, used, occupied, and improved, are subject to the following
restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale
of the Property and each Lot (hereafter defined) situated therein, and are established and agreed
upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the
Property as a whole and each of the Lots (hereafter defined) situated therein. The restrictions
shall run with the Property and shall be binding upon the Declarant, its successors and assigns,
and upon the parties having or acquiring any interest in the Property or any part or parts thereof
subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its
respective successors entitled to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The
Owner (hereafter defined) of any Lots (hereafter defined) subject to these restrictions, by (i)
acceptance of a deed conveying title thereto, or the execution of a contract for the purchase
thereof, whether from Declarant, a Builder (hereafter defined), or a subsequent Owner (hereafter
defined) of such Lot (hereafter defined) or (ii) the active occupancy of any Lot (hereafter
defined), shall accept such deed, execute such contract and/or actively occupy such Lot
(hereafter defined) subject to each restriction and agreement herein contained. By acceptance of
such deed, execution of such contract, and/or actively occupying such Lot (hereafter defined),
each Owner (hereafter defined) acknowledges the rights and powers of Declarant and of the
Association (hereafter defined) with respect to these restrictions and also for itself, its heirs,
personal representatives, successors, and assigns covenants and agrees and consents to and with
Declarant, the Association (hereafter defined), and the Owners (hereafter defined) of each of the Lots (hereafter defined) hereby affected to keep, observe, and comply with the terms and conditions hereof.

Declarant shall have the right, and hereby reserves on to itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period (hereafter defined), to add to the Property and subject to this Declaration all or any part of the Additional Real Estate (hereafter defined). Any portion of the Additional Real Estate (hereafter defined) shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hancock County, Indiana an instrument so declaring the same to be part of the Property, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate (hereafter defined), or by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate (hereafter defined).

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

**ARTICLE I**

**Name**

The subdivision of the Property created by this Declaration shall be known and designated as Summerset (hereafter "Subdivision").

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ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 “Act” means the Indiana Nonprofit Corporations Act, Indiana Code 23-17 et seq., and any amendments thereto.

Section 2.2 “Additional Real Estate” shall mean that real estate, or any part thereof, contiguous to the northern boundary of the Real Estate and not exceeding twenty (20) acres.

Section 2.3 “Articles” means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.4 “Association” means the SUMMERSET HOMEOWNERS ASSOCIATION, INC., a non-profit Association, its successors and assigns.

Section 2.5 “Board of Directors” means the Board of Directors of the Association.

Section 2.6 “Builder” means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 2.7 “Building” means a structure having one or more Dwelling Units (hereafter defined).

Section 2.8 “Common Area” means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a “Block”, “Common Area”, “C.A.”, or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area is to be conveyed to the Association at a time deemed appropriate by Declarant.

Section 2.9 “Common Expenses” shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.
Section 2.10 "Cottage" shall mean and refer to any detached Dwelling Unit (hereafter defined) situated upon a Lot (hereafter defined).

Section 2.11 "Declarant" means JUSTUS HOMES, INC., an Indiana Corporation and its successors and assigns.

Section 2.12 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property.

Section 2.13 "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated upon a Lot (as hereafter defined) designed and intended for use and occupancy as a residence by one (1) single family. A Dwelling Unit may be separate and detached or attached to another Dwelling Unit.

Section 2.14 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.15 "Lot" or "Lots" shall mean, as the context requires, any discrete plot of land created by and shown on a Plat (as hereafter defined) upon which a Dwelling Unit is intended to be constructed in accordance with applicable zoning ordinances or, after construction, that discrete plot of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall (as hereafter defined), or (ii) shares a Party Wall (as hereafter defined) with an adjacent Dwelling Unit, the center line of such Party Wall (as hereafter defined) and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots; provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall (as hereafter defined), but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat [as hereafter defined] or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat (as hereafter defined) or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat (as hereafter defined) or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner (as hereafter defined) of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supercede the boundary lines for Lots shown on any Plat (as hereafter defined) or part thereof.
Section 2.16 “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term “Owner” shall include the Declarant.

Section 2.17 “Paired Cottage” shall mean and refer to any Dwelling Unit situated upon a Lot which is attached by a common party wall to another Dwelling Unit situated upon a Lot.

Section 2.18 “Party Wall” shall mean and refer to each wall which is built as part of the original construction of the Dwelling Unit upon the Property and placed on the dividing line between Lots. Party Walls are further described and defined in Article 8 below.

Section 2.19 “Plat” means the subdivision plats of the Property, which are recorded with the Recorder of the county in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.

ARTICLE III

Property Rights, Easements and Encroachments

Section 3.1 Owners’ Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) Those areas designated on the Plat as Common Areas shall be maintained by the Association in their then natural state except such selected clearing as from time to time may be necessary to implement good husbandry practices;

(d) Structures are prohibited within or upon those areas designated on the Plat as Common Areas except for gazebos or any other structure constructed by Declarant;

(e) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation,
parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(f) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

(g) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (% of the membership of each class of members of the Association; provided, however, Declarant has the right to mortgage any or all of the Common Area prior to the Applicable Date (hereinafter defined) without the consent of Class A members (hereafter defined) or the Association;

(h) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(i) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (% of the membership of each class of members of the Association; provided, however, that Declarant may dedicate or transfer all or any part of the Common Area as set forth above without the consent of Class A members (hereafter defined) or the Association prior to the Applicable Date (hereafter defined);

(j) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner’s easement for ingress and egress;

(k) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision; and

(l) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, or contract purchasers who reside on the Lot (hereafter “Assignees”), which Assignees are subject to the same rules, regulations and restrictions on usage of the Common Area as any Owner under this Declaration.
Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder’s warranty or any other obligation.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner’s use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant’s right to further alter or grant easements shall automatically terminate and pass to the Association two (2) years after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement (“Drainage, Utility and Sewer Easement”) for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to
any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area(s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). All such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

   (i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

   (ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

   (iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of the County in which the Property is located.

Any such easements, licenses or rights-of-way relocated, altered, changed, or created under this section shall be subject to the right of the Declarant during the Development Period and
Association thereafter, to remove any improvements or facilities (including the right to remove where reasonably necessary without duty of replacement or reimbursement) located upon said Property.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in the Subdivision.

Section 3.7 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, private utilities and Declarant for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this Subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities, including Declarant, to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat
issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (i) the area of any such easements and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any fence or other structure, improvement or landscaping built, erected, maintained or planted in any easement described in Sections 3.4, 3.5, 3.7 and Section 3.8 above (including the right to remove where reasonably necessary without duty of replacement or reimbursement, other than the duty to regrade and reseed any area so disturbed).

Section 3.11 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.
Section 3.12 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the property which is adjacent to the Property.

ARTICLE IV

Association Membership, Voting Rights,
Board of Directors, and Professional Management

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B Membership shall cease and be converted to a Class A Membership on the happening of either of the following events, whichever occurs earlier ("Applicable Date"): (i) December 31, 2021; or (ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership.

Section 4.3 Board of Directors. The initial Board of Directors shall be appointed by the Declarant as set forth in Section 9.04 of the Association's Articles of Incorporation, and shall serve until the Applicable date. After the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws.
Board of Directors shall manage the affairs of the Association. Prior to the Applicable Date, Directors need not be members of the Association; however, after the Applicable Date, Directors must (i) meet all qualifications set forth within the Articles and (ii) reside within the Subdivision.

Section 4.4 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years, except those contracts executed prior to the Applicable Date. Any such agreement or contract shall (i) provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less and (ii) be subject to approval by the Board of Directors of the Association. Declarant reserves unto itself, prior to the Applicable Date, the unilateral right to contract with the Association for the professional management of the Association, in exchange for reasonable compensation to Declarant for services rendered.

ARTICLE V

Covenant for Maintenance Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Excluding Declarant except as set forth herein, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses);

(b) Special Assessments for capital improvements, insurance adjustments (which may be assessed differently for Cottage and Paired Cottage Owners), operating deficits, and for special maintenance or repairs as provided in this Declaration; and

(c) Lot Maintenance Assessments for maintenance of individual Lots as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.
Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for payment of casualty insurance premiums, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments

(a) For each year prior to January 1 of the year immediately following the Applicable Date, the Declarant shall calculate the Regular Yearly Assessment and divide equally among each Owner, excluding Declarant, without the approval or vote of the membership. Declarant, prior to the Applicable Date, and the Association thereafter may, at its discretion, require that each Owner pay the Regular Yearly Assessment in monthly, quarterly or semi-annual installments. However, unless notified otherwise thirty (30) days before the due date of the Regular Yearly Assessment, the Regular Yearly Assessment shall be paid in an annual installment.

(b) From and after January 1 of the year immediately following the Applicable Date, the Regular Yearly Assessment may be increased each calendar year by the Board of Directors not more than twenty-five percent (25%) above the Regular Yearly Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of the year immediately following the Applicable Date, the Regular Yearly Assessment may be increased each calendar year by more than twenty-five percent (25%) above the Regular Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) During the Development Period, Declarant shall be exempt from payment of the Regular Yearly Assessment for any and all Lots for which Declarant is the Owner.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits.

(a) In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, (i) the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, (ii) the additional cost of carrying casualty insurance for the Cottages, (iii) or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those members who cast votes in
person or by proxy at a meeting duly called for this purpose; provided, however, that prior to January 1 of the year immediately following the Applicable Date, the Declarant may levy a Special Assessment as set forth above without a vote or approval by membership.

(b) During the Development Period, Declarant shall be exempted from payment of any Special Assessment in each year for any and all Lots for which Declarant is the Owner.

Section 5.5 Lot Maintenance Assessments.

(a) In addition to the Regular Yearly Assessments and Special Assessments authorized above, prior to January 1 of the year immediately following the Applicable Date, the Declarant may levy a Lot Maintenance Assessment annually for the purpose of defraying, in whole or in part, the cost of all expenses incurred each calendar year in Lot Maintenance, as described and set forth in Section 7.2 herein, for each individual Lot upon which there is constructed a Dwelling Unit; provided, however, that prior to January 1 of the year immediately following the Applicable Date, the Declarant may levy a Lot Maintenance Assessment as set forth above without a vote or approval by membership. The yearly Lot Maintenance Assessment shall be calculated by adding together all costs of Lot Maintenance, as described in Section 7.2 herein, for each Lot in the Subdivision upon which is constructed a Dwelling Unit, then dividing that total cost by 365 days in a year, then multiplying the resulting daily rate times the number of days each Owner, excluding Declarant, held legal title to their Lot during the applicable calendar year. Declarant, prior to the Applicable Date, and the Association thereafter may, at its discretion, require that each Owner pay the Lot Maintenance Assessment in monthly, quarterly or semi-annual installments. However, unless notified otherwise thirty (30) days before the due date of the Lot Maintenance Assessment, the Lot Maintenance Assessment shall be paid in an annual installment.

(b) From and after January 1 of the year immediately following the Applicable Date, the Lot Maintenance Assessment may be increased each calendar year by the Board of Directors not more than twenty-five percent (25%) above the Lot Maintenance Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of the year immediately following the Applicable Date, the Lot Maintenance Assessment may be increased each calendar year by more than twenty-five percent (25%) above the Lot Maintenance Assessment for the previous year, by a vote of two-thirds (%) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) During the Development Period, Declarant shall be exempt from payment of the Lot Maintenance Assessment for any and all Lots for which Declarant is the Owner.

Section 5.6 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than fourteen (14) days prior to the meeting. At the first such meeting called, the presence of Members or of proxies
entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.7 Uniform Rate of Assessment. Regular Yearly Assessments, Special Assessments for capital improvements, casualty insurance and to recover operating deficits, and Lot Maintenance Assessments must be fixed at a uniform rate for all Lots as set forth hereinabove; provided, however, (i) any Special Assessments due to additional cost of carrying casualty insurance related to the Cottages shall not be fixed at a uniform rate for all Lots and, instead, shall apply uniformly only to those Lots containing Cottages, (ii) that any Builder acquiring title to a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon shall pay, with respect to such Lot or Lots, only twenty-five percent (25%) of the Regular Yearly Assessments, Special Assessments, and Lot Maintenance Assessments so long as any Dwelling Unit under construction thereon has not been substantially completed as determined in the sole discretion of the Declarant and (iii) as set forth hereinabove, Declarant is exempt from payment of any and all Regular Yearly Assessments, Special Assessments, and Lot Maintenance Assessments during the Development Period.

Section 5.8 Date of Commencement of Yearly Assessments; Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the date of the closing of the sale of said Lot transferring ownership to an Owner other than Declarant, and shall be prorated as of that same date through the end of that same calendar year; provided, however, thereafter said Owner will be responsible for the full Regular Yearly Assessment. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of (i) any increase in the Regular Yearly Assessment, (ii) any Special Assessment and (iii) any changes to the due dates of any assessments, and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Regular Yearly Assessment, Lot Maintenance Assessment and Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.9 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates,
binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner’s successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner in which mortgages are foreclosed, or both. In such event, there shall be added to the amount of such assessment the costs and attorney’s fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys’ fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot, or for any other reason.

Section 5.10 Declarant Exemption from Assessments. Notwithstanding anything to the contrary herein or in the Articles, Bylaws of the Association or elsewhere, Declarant is exempt from and shall not be obligated to pay any Regular Yearly Assessments, Special Assessments and/or Lot Maintenance Assessments during the Development Period. However, Declarant will be responsible for maintaining each Lot for which Declarant is the Owner.

Section 5.11 Subordination of the Lien to Mortgages; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

ARTICLE VI

Use, Restrictions, and Architectural Control

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be

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promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been first submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant during the Development Period, and thereafter by the Board of Directors of the Association. During the Development Period, the Declarant may appoint three (3) or more representatives to an Architectural Committee. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. However, there shall be no such approval of the planting of hedges, walls, structures and/or other improvements prohibited under Section 3.8 above, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of an approved Dwelling Unit or accessory building unless the removal thereof is otherwise specifically approved by Declarant or the Architectural Committee or any such tree is dead or decayed and dangerous.

Declarant intends that the members of the Architectural Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Committee, could only conclude that such determination constituted an abuse of discretion.

The Architectural Committee may inspect work being performed without the Owner’s permission to assure compliance with these restrictions and applicable regulations.
Neither the Architectural Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, the materials to be used or the compliance with local zoning laws, ordinances and regulations. All parties should seek professional construction advice, engineering, and inspections on each lot prior to proposing construction.

**Section 6.3 Animals.** No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property. All animals permitted under this section shall be kept on a leash when outside the confines of Owner’s Lot, and Owner shall be responsible for retrieval and disposal of all waste generated by such animal. Exterior dog houses and kennels are prohibited.

**Section 6.4 Outside Storage.** All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers and shall not be permitted to remain curbside other than on the day of pickup by the trash service.

**Section 6.5 Setback Lines.** Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except by Declarant as otherwise permitted in this Declaration. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

**Section 6.6 Side Setbacks.** The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

**Section 6.7 Temporary Structures and Outbuildings.** No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

**Section 6.8 Motor Vehicle Repair.** The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.
Section 6.9 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Excessive noise is also prohibited. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.10 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.11 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.12 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed thirty-five (35) feet in height.

Section 6.13 Size. No Dwelling Unit may be constructed on any Lot unless such Dwelling Unit, exclusive of open porches, attached garages and basements (whether finished or unfinished), shall (i) in the case of a Paired Cottage, have a ground floor area of at least 1,230 square feet, and (ii) in the case of a Cottage, have a ground floor square footage of at least 1,309 square feet.

Section 6.14 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.15 Sight Visibility. No wall, hedge, shrub planting or other structure which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be
permitted to be constructed between the front set back line and the street curb, except by Declarant as otherwise permitted in this Declaration.

Section 6.16 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant’s, builder’s or Association’s business on the Property; provided, however, that a recreational vehicle, camper or boat may be parked on the Property for one twenty-four (24) hour period for the purposes of loading and unloading the vehicle, camper or boat, as long as said recreational vehicle, camper or boat does not impede or block the traffic flow on the Property.

Section 6.17 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) square feet may be displayed by an Owner with the purpose of advertising the Lot for sale.

Section 6.18 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in siting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, fishing, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 6.19 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. After the Applicable Date, a majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner’s last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and
guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.20 Development Period. Nothing contained in this Article 6 or elsewhere in this Declaration shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices, business offices and fences, all of which must be approved by Declarant.

Section 6.21 Outside Use of Lots. Except (i) in an individual patio area appurtenant to a Dwelling Unit and (ii) in the front yard, no planting or gardening shall be done, except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors; provided, however, that the addition of ornamental structures (i.e., Window boxes, trellises, etc) shall be approved by the Board of Directors of the Association. No fences, hedges, walls or other improvements shall be erected or maintained upon the Property except as installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors. Above ground swimming pools are prohibited on the Property.

Section 6.22 Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association.

Section 6.23 Garage Lights. The builder on each Lot shall supply and install a garage coach light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association. Each such light fixture shall also have a bulb of sufficient wattage to insure uniform illumination on each Lot and shall be equipped with a photo-electric cell or similar device to insure automatic illumination from dusk to dawn each day. The garage coach light thereafter shall be maintained in proper working order by the Owner of each Lot.

Section 6.24 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

(a) Any home occupation must be conducted entirely within the residence
and conducted solely by a member of the immediate family residing in said Dwelling Unit;

(b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;

(c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;

(d) No commodity can be sold from the Lot or Dwelling Unit located thereon.

(e) Other than household help such as babysitters, maids and the like, no person can be employed other than a member of the immediate family residing in the Dwelling Unit;

(f) No manufacturer or assembly operations can be conducted;

(g) Storage of combustible commercial products is prohibited; and

(h) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following similar activities be conducted: child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 6.25 Fences. The Architectural Committee, prior to any installation, must approve any fencing and landscape screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Architectural Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Architectural Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Architectural Committee. Non-professionally installed fences may be inspected by the Architectural Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front line than the rear foundation line of the residence, except as otherwise permitted Declarant in this Declaration.
Fences are to be wrought iron, PVC or any material approved by the Architectural Committee. Wood, chain link and vinyl coated chain link fences are prohibited. The Architectural Committee must approve in writing all fencing materials, design, and location prior to commencement of construction/installation. The Architectural Committee will approve landscape screening materials, design, and location on an individual basis.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Architectural Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

Section 6.26 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are connected to the Dwelling Unit must be approved by the Architectural Committee.

Section 6.27 Garages. Each attached garage shall be designed as a part of each Dwelling Unit to which it is attached. Further, garage doors shall remain closed except when entering, exiting or otherwise having the need to access the garage.

Section 6.28 Exterior Surfaces. The concrete or block foundation of any single family Dwelling Unit or accessory structure constructed on a Lot shall be covered on the exterior so that no portion of the exterior thereof is left exposed above ground. No Dwelling Unit or other structure shall contain aluminum or vinyl siding.

Section 6.29 Pitches. The roof of each single-family Dwelling Unit constructed on a Lot (excluding that portion of the roof covering the attached garage or open or enclosed porch) shall have a pitch of between 6 vertical-12 horizontal to 12 vertical –12 horizontal or greater unless otherwise approved by Declarant or the Architectural Committee as a part of Declarant’s approval of lot development plans.

Section 6.30 Tree Houses, Basketball Goals, and Play Ground Equipment. No tree houses, basketball goals, playground equipment, and the equivalent thereof, will be allowed on any Lot.

Section 6.31 Antenna and Satellite Dishes. No outside antennas shall be permitted in the Subdivision. Outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that (i) the diameter of the satellite dish shall be no more than one (1) meter, (ii) only one (1) satellite dish shall be permitted on each Lot, and (iii) the Architectural Committee shall have first approved in writing the satellite dish.
ARTICLE VII

Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot. Any repainting of the exterior of a Dwelling Unit by Owner including, but not limited to the hardiplank, wood trim, and garage door, must be in substantial conformity with the color that was originally painted by the Declarant or Builder, and said color must be a neutral tone. Any Owner that desires to repaint the exterior of a Dwelling Unit as set forth hereinabove in a color other than that which was originally painted by the Declarant or Builder must first obtain written approval for said color change from the Architectural Review Committee.

Section 7.2 Lot Maintenance. The Association shall undertake the following with respect to each Lot upon which a Dwelling Unit has been completed:

   (a) mow, trim and fertilize grass located on the Lot; provided, however, that (i) the Association shall not be required to maintain or fertilize any flowers, plants, trees or shrubs, (ii) the Association is not responsible for mowing, trimming or fertilizing areas of grass on any Lot which are inaccessible, unless Owner makes reasonable efforts to make the area accessible to the Association and (iii) the Association shall not be required to water lawns on Lots, which shall be the responsibility of the Owner; and

   (b) remove snow from driveways and sidewalks connecting the driveway and the front entrance of any Dwelling Unit; provided, however, that the Association has no obligation to remove snow from sidewalks parallel and adjacent to any publicly dedicated streets or any other location on a Lot other than as set forth above.

Section 7.3 Common Area and Lawns by the Association.

   (a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
(i) Maintenance of the Common Area which shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of the entry signs, permanent subdivision identification sign, and landscaping installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

(iii) The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot;

(iv) The maintenance of any brick surface installed by Declarant on any internal street or entryway, and the maintenance of any private streets not dedicated to the public; and

(v) Periodic removal of snow from publicly dedicated streets which is necessary due to untimely removal of snow by the municipality (i) as determined by the Declarant during the Development Period until the Applicable Date and (ii) as determined by the Association after the Applicable Date.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association’s insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner’s Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

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ARTICLE VIII

Party Walls

Section 8.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Property and which connects two Paired Cottages shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 8.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners sharing such wall proportionately.

Section 8.3 Destruction by Fire or Other Casualty. If any Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner sharing such wall may restore it, and the Owner sharing such wall shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, subject to the right of either of such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 8.4 Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes a Party Wall to be exposed to elements shall bear the entire cost of correcting such condition.

Section 8.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and be a covenant running with the land and shall pass to such Owner's successors in title.

Section 8.6 Arbitration. In the event of any dispute arising in connection with a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators together shall choose one additional arbitrator, and the decision shall be by a majority of the three arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party).

ARTICLE IX

Insurance

Section 9.1 Association Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy for bodily injury, including deaths of persons, and property damage in such amount or amounts as the Board of Directors shall deem
appropriate from time to time. The premiums for all such liability policies shall be a Common Expense. Such comprehensive general liability insurance policy shall cover the Common Area and shall insure the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all public ways in the Subdivision and any other areas under the Association’s control or supervision, if said coverage is obtainable and deemed reasonable by the Board. The master comprehensive general liability policy shall contain a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners; provided the Board of Directors is able to obtain such coverage and deems it reasonable. Such general liability policy shall not cover the personal liability of an Owner, as each Owner is responsible for insuring his or her own personal liability and the personal liability for his or her Dwelling Unit.

Section 9.2 Casualty Insurance.

(a) The Association shall purchase a master casualty insurance policy with an “agreed amount and inflation guard endorsement” and a “blanket building endorsement” affording fire and extended coverage insurance insuring each Dwelling Unit in an amount equal to the full replacement value of the improvements, which, in whole or in part, comprise the Dwelling Units, which coverage is subject to exceptions as stated in the master insurance policy. If possible, said policy shall include all fixtures; all floor, ceiling and wall coverings permanently affixed to the Dwelling Unit; and appliances such as those used for refrigerating, ventilating, cooking, dishwashing, trash compacting, laundring, security or housekeeping. Also, if the Board of Directors is able to purchase such insurance, the policy should include permanent Owner (unit holder) improvements or additions, such as sunrooms, enclosed or screened-in porches, decks, patios, fences and skylights. The master casualty insurance policy will exclude any personal property owned by any Owner whether located on any Lot, in any Dwelling Unit or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts, it shall also obtain “all risk” coverage, excluding flood and earthquake coverage, unless flood and earthquake coverage is deemed feasible by the Board of Directors. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall endeavor to purchase such additional insurance as is necessary to provide the insurance required and/or requested above. If deemed advisable by the Board of Directors, the Board of Directors may cause such replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Mortgagee of each such Owner.

(b) The Association shall purchase a casualty insurance policy with an “agreed amount and inflation guard endorsement” or its equivalent affording first and extended coverage insuring all Common Area owned by the Association, including, but not limited to, utilities, recreational equipment, and any other Common Area improvements, in an amount equal to the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts, it shall also obtain “all risk” coverage for the Common Area. The Board
of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Directors, the Board of Directors may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners.

(c) The sole duty of the Board of Directors in connection with any insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Association or the Board of Directors, as appropriate, only in accordance with the provisions of this Declaration. Such casualty insurance policies and “all risk” coverages, except flood and earthquake coverages, if obtained, shall (to the extent that same are obtainable) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, the Owners, their respective agents and guests, and (ii) waives any defense based on the invalidity arising from the acts of the insured, and providing further to the extent obtainable upon reasonable terms (A) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (B) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

Section 9.3 Miscellaneous Insurance. The Association shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker’s compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and officers’ and directors’ liability policies. If possible to obtain and deemed reasonable by the Board of Directors, such insurance coverage shall also provide for and cover cross liability claims of one insured against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors this right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors, the proceeds of which are payable to the Board or the Association.

Section 9.4 General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner and Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least ten (10) days prior written notice to the Owner and Mortgagee of each Lot and Dwelling Unit.
In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a Mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

Section 9.5 Insurance by Owners. Each Owner shall be solely responsible for and may obtain such insurance as he deems necessary or desirable, at his own expense, affording coverage for additional living expenses, coverage on his personal property, the contents of his Dwelling Unit, his personal property stored anywhere on the Property, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

Section 9.6 Fidelity Bonds. After the Applicable Date, the Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent’s bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years’ assessments on all Dwelling Units in the Property, plus the Association’s reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days’ written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

ARTICLE X

Casualty and Restoration; Condemnation; Termination

Section 10.1 Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit, or in the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of
insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds received, if any, shall be assessed by the Association against all of the Owners in equal shares as a Special Assessment and (ii) the cost for restoring the damage and repairing and reconstructing any Common Area (excluding items deemed Common Area for maintenance only) so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares as a Special Assessment and shall constitute a lien from the time of assessment as provided herein.

For the purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building or Dwelling Unit so damaged or destroyed to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

As soon as reasonably possible after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any Building or Dwelling Unit shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building or Dwelling Unit was originally constructed.

Section 10.2 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

Section 10.3 Total or Partial Condemnation.

(a) In the event of the condemnation of all or any part of the Common Area, or of all or any part of any Building, Dwelling Unit or Lot, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for

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the appropriation of such Common Area, Buildings, Dwelling Units or Lots. For the purpose of such negotiation and/or of contest of such award to the Board as to Buildings, Dwelling Units and Lots, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

(b) Awards for the taking of all or part of a Building, Dwelling Unit or Lot shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, such Owner shall be entitled to have the dispute settled by arbitration as provided herein. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint a second arbitrator and such arbitrators together shall choose a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

Section 10.4 Termination. In the event of the condemnation of two-thirds (2/3) or more of the Dwelling Units in the Subdivision, the remaining Owners may, by a majority vote, terminate this Declaration and dissolve the Association, provided, however, that the restrictions set forth in the subdivision Plat and in Article VI shall remain in full force and effect in accordance with the terms of the Plat and Article XII of the Declaration. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

ARTICLE XI

Mortgages

Section 11.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any Property taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefrom from the Association along with any costs incurred, including reasonable attorneys' fees.
Section 11.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 11.3. Notice to Association. Any Owner who places a first mortgage lien upon his Lot or Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Association of such lien and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown on such record in the time provided. Unless notification of any such mortgage lien and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 11.4. Notice Of Certain Actions or Conditions. The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Subdivision or any Dwelling Unit on which there is a first mortgage;

(ii) any default in the performance by its borrower Owner of any obligations of such borrower Owner under this Declaration or the By-Laws which is not cured within sixty (60) days;

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

(iv) any proposed action which would require the consent or approval of Mortgagees.

Section 11.5. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot and Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Yearly Assessments, Lot Maintenance Assessments, or Special Assessments or other charges against the Lot and Dwelling Unit, which statement shall be binding upon the Association and the Owners, and any Mortgagee or
purchaser of the Lot and Dwelling Unit shall not be liable for nor shall the Lot and Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to herein.

Section 11.6 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 11.7 Right of First Refusal. The Association DOES NOT have the “right of first refusal” to purchase any Dwelling Unit. Any right of “right of first refusal” subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any “right of first refusal” subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

(a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;

(b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or

(c) Sell a unit acquired by the mortgagee.

Section 11.8 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit’s unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

ARTICLE XII

General Provisions

Section 12.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant or the Association, and all parties claiming under them, shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys’ fees and the costs and expenses incurred as a result thereof.
Section 12.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 12.3 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the County in which the Property is located, approved and signed by Owners, including Declarant, entitled to cast at least seventy-five percent (75%) of all votes permitted from Class A members and the Class B members combined under Article IV of this Declaration; provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant’s prior written approval. Notwithstanding the foregoing, this Declaration may also be unilaterally amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any such amendment must be recorded.

Section 12.4 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 12.5 Clerical Errors. During the Development Period, Declarant may record supplements to this Declaration in order to correct clerical mistakes at any time and without consent, approval or vote of membership.

Section 12.6 Liability to the Association. No person shall be liable to the Association for any loss or damage suffered by the Association on account of any action taken or omitted to be taken by such person in good faith as a Director, officer, employee or agent of the Association if such person (i) exercised or used the same degree of care as an ordinary prudent person in a like position would use under similar circumstances; or (ii) took or omitted to take such action in reliance upon information, opinions, reports or statements, including financial statements and other financial data, in each case, prepared or presented by any officer, employee or committee of the Board of Directors of the Association, or legal counsel, public accountants or other professional persons engaged by the Association, but such person shall not be considered to be acting in good faith if such person has actual knowledge concerning the matter in question that would cause such reliance to be unwarranted; or (iii) has not breached or failed to perform the duties of their position or office in compliance with the Act, Articles of the Association and By-Laws of the Association in a manner constituting willful misconduct or recklessness.
Section 12.7, Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Area shall be paid by the Association and treated as a Common Expense.

Section 12.8, Utilities. Each Owner shall pay for his or her own utilities which shall be separately metered to each Lot and Dwelling Unit.

Section 12.9, Pronouns Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

IN WITNESS WHEREOF, JUSTUS HOMES, INC., an Indiana Corporation, has caused this Declaration to be executed as of the date first written above.

JUSTUS HOMES, INC., an Indiana Corporation

By: ________________________________
    Walter E. Justus, President

STATE OF INDIANA )
COUNTY OF Marion ) SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Walter E. Justus, President of Justus Homes, Inc., an Indiana Corporation, and acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Summerset.

Witness my hand and Notarial Seal this 7th day of November, 2006.

My Commission Expires: 1/6/07

Residing in Marion County

Notary Public

Printed Name

Prepared By: Lawrence J. Kemper, NELSON & FRANKENBERGER, 3105 East 98th Street, Suite 170, Indianapolis, Indiana 46280, (317) 844-0106.

File: LARRY/justus/summerset CCRs 110606.Final.doc
EXHIBIT "A"

A part of the Northwest Quarter of Section 34, Township 16 North, Range 7 East, and more fully described as follows:

Beginning on the west line of said Quarter section South 00 degrees 01 minute 42 seconds East (assumed bearing and basis for this description) a distance of 1440.30 feet from the Northwest corner of said Northwest Quarter of said Section 34; Thence North 89 degrees 57 minutes 19 Seconds East for a distance of 40.35 feet; Thence North 44 degrees 57 minutes 19 seconds East for a distance of 35.36 feet; Thence North 89 degrees 57 minutes 19 seconds to a point of curvature; Thence northeasterly along an arc to the left having a radius of 275.00 feet and a length of 221.69 feet and being subtended by a chord bearing North 66 degrees 51 minutes 39 seconds East with a length of 215.74 feet; Thence North 43 degrees 46 minutes 00 seconds East for a distance of 8.90 feet; Thence North 89 degrees 51 minutes 51 seconds East for a distance of 681.39 feet to the East line of the Southwest Quarter of said Northwest Quarter; Thence South 00 degrees 02 minutes 40 seconds East for a distance of 558.00 feet; Thence South 89 degrees 51 minutes 51 seconds West for a distance of 1338.27 feet to the west line of said Northwest Quarter; Thence along said west line North 00 degrees 01 minute 42 seconds West for a distance of 443.00 feet to the point of beginning. Containing 15.879 Acres more or less.

ALSO KNOWN AS SUMMERSSET, LOTS 1 THROUGH 55.