5900 25

2007006682 DECL $59.00
02/02/2007 03:47:28P 25 PGS
Jennifer J Hayden
HAMILTON County Recorder IN
Recorded as Presented

CROSS-REFERENCE: The Secondary Plat of The Ridge, Section One, recorded January 2, 2007, as Instrument No. 2007-000172 in the Office of the Recorder of Hamilton County, Indiana.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RIDGE

THIS DECLARATION, made on the 30th day of January, 2007, by ***BEAZER HOMES INDIANA LLP***, an Indiana limited liability partnership ("**Declarant**"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Hamilton 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, the real estate more commonly described in what is attached hereto and incorporated herein by reference as **Exhibit B** shall hereafter be referred to as the "**Additional Real Estate**";

WHEREAS, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

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

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, 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 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 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 right to, or interest in, the Property or any part or parts thereof subject to these restrictions and their respective heirs, successors and assigns. The restrictions shall inure to the benefit of the Declarant and its respective successors in title 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 of any Lots 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 or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association 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, and the Owners of each of the Lots hereby affected to keep, observe, and comply with the terms and conditions hereof.

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

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots 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, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the 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 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 ***THE RIDGE*** (hereafter "**Subdivision**").

ARTICLE II

Definitions

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

"*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.

"*Association*" means **THE RIDGE HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and assigns.

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

"*Builder*" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

"*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), and (2) 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 to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

"*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.

"*Declarant*" means the ***BEAZER HOMES INDIANA LLP***, an Indiana limited liability partnership and its successors and assigns.

"*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. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

"*Dwelling Unit*" means any single-family residence situated upon a Lot (as hereafter defined).

"*Lot*" or "*Lots*" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed one (1) single detached Dwelling Unit. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

"*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.

"*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) 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;

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

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) 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;

(g) 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 (2/3) of the membership of each class of members of the Association; and

(h) 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;

(i) 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;

(j) 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, tenants or contract purchasers who reside on the Lot.

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.

Section 3.4 *General Drainage, Utility, Sewer and Other Development Easement.* The following rights and easements reserved in this **Section 3.4** shall not be exercised with respect to a Lot, after the conveyance of such 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 3.4** shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself during the Development Period, and unto any public or private utility, a general easement ("**General 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 installed and maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including, without limitation, cable and/or satellite) transmission facilities, and other utility services (including all necessary pipes, lines, ducts, wires, cables, antennae, and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. This General Drainage, Utility, and Sewer 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 the 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, 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). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(c) 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, 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, 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 Hamilton County, Indiana.

(d) 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 of the Subdivision.

Section 3.7 *Designated Drainage, Utility, and Sewer Easements.* There are strips of ground designated on the Plat as Drainage and Utility Easements (D.&U.E.) and Drainage Sewer and Utility Easements (D.S.&U.E.) which are hereby reserved to the appropriate governmental entities, public

utilities and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, and 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 to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences, driveways and walks which do not retard or impede the flow of drainage water and which are approved pursuant to **Sections 6.2 and 6.26** below, shall be built, erected or maintained on said drainage easements except by 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 the 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 within the area of any such easements located adjacent to any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

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 7.2** 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 planted, to any owner, to remove,

damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in **Section 3.7** and **Section 3.8** above.

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 real estate 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 three (3) 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 Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) December 31, 2020; 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; provided, however, that the Class B Membership shall recommence in the event that the Declarant subsequently records a plat of part of or all of the Property and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to or greater than the total number of votes outstanding in the Class B Membership; or

(iii) The date on which the Class B Member agrees in writing to the cessation and conversion of the Class B membership.

Section 4.3 *Board of Directors.* The Board of Directors of the Association shall be appointed and/or elected as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 *Professional Management.* The Association may, in its sole and subjective discretion, engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. 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. Any such agreement or contract shall 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.

Section 4.5 *Fulfillment of Commitments.* Notwithstanding the cessation of the Class B membership and the turnover of the Association, and notwithstanding the conveyance of any Common Area by the Declarant to the Association, the Declarant reserves the right to enter upon any Lots and/or Common Areas for the purpose of complying with any written or unwritten commitments extended to any municipality or zoning jurisdiction in connection with any zoning approvals, plat approvals, variance approvals, special use or exception approvals, and/or any other approvals granted by such municipality or zoning jurisdiction.

ARTICLE V

Covenant for Maintenance Assessments

Section 5.1 *Creation of the Lien and Personal Obligation of Assessments.* Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and 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 and operating deficits and for special maintenance or repairs as provided in this Declaration; and

(c) One Time Assessment for purposes specified below.

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 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) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be $200.00 per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty percent (20%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership. In addition, upon the employment and engagement by the Association of a professional manager or management company to assist the Board of Directors in the management and administration of the Association, there shall immediately and automatically, without notice or vote of membership, be added to the regular annual assessment the cost of such professional management.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty percent (20%) above the maximum 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) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 *Special Assessments for Capital Improvements and Operating Deficits.* 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, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, 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.

Section 5.5 *One-time Assessment.* Upon the closing of the initial conveyance of each Lot by Declarant, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of One Hundred Fifty and $^{00}/_{100}$ Dollars ($150.00), which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board of Directors.

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 thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to 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; Assessment Exception.* Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots. Notwithstanding anything to the contrary set forth herein, Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "**Builder**") (i) shall not pay any assessments with respect to any vacant or unimproved Lots, and (ii) shall pay only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments due so long as a Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Units as a residence or leased to an individual or entity for use as a residence.

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 secondary plat on the first day of the first month following the recording of such secondary plat. 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 any increase in the Regular Yearly Assessment, and written notice of any Special Assessment 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 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, 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.

Section 5.10 *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 single family detached 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 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 submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Control 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 approval of the planting of hedges, walls, fences, 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.

Every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by the Declarant, the Board of Directors, and/or the Architectural Control Committee. In any judicial proceeding challenging a determination by the Declarant, Board of Directors, and/or Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Declarant, Board of Directors, and/or Architectural Control 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 Declarant, Board of Directors, and/or Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

The Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee, may in its discretion inspect work being performed, without the Owner's permission, to assure compliance with these restrictions and applicable regulations. All improvements must be constructed as approved and, therefore, must be constructed per the approved plans and in the approved location. If construction of an improvement is not completed within thirty (30) days after approval, then the Declarant, during the Development Period, and thereafter the Board of Directors or the Architectural Control Committee may, in its discretion, withdraw and revoke the approval.

Under no circumstances shall the Declarant, the Board of Directors, and/or the Architectural Control Committee 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. Under no circumstances shall the Declarant, the Board of Directors, and/or the Architectural Control Committee 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 Declarant, the Board of Directors, and/or the Architectural Control Committee make no comment, representation or warranty as (i) to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used and/or (ii) the compliance of any intended improvements with applicable laws, statutes, zoning ordinances, and/or municipal regulations. All parties should seek professional advice, engineering, and inspections on each lot prior to proposing construction.

Section 6.3 *Leasing.* Any Lot may be leased by its Owner.

Section 6.4 *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.

Section 6.5 *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.

Section 6.6 *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 fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Board of Directors and/or Architectural Control Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. 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 6.7 *Side Setbacks.* The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.8 *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 6.9 *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 6.10 *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. 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 6.11 *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 6.12 *Drains.* No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 *Residential Use.* Lots may be used only for residential purposes and only for one single- family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one-half (2-½) stories or thirty-five (35) feet in height.

Section 6.14 Number of Dwelling Units. The number of Dwelling Units shall not exceed the number of Lots within the Property.

Section 6.15 *Size.* Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.16 *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 6.17 *Site Visibility.* No fence, wall, hedge or shrub planting 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.

Section 6.18 *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.

Section 6.19 *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) feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.20 *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. 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 6.21 *Development and Sale Period.* Nothing contained in this Article VI 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 and business offices.

Section 6.22 *Outside Use of Lots.* Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.23 *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 and/or the Architectural Control Committee.

Section 6.24 *Notice of Zoning Commitments.* Notice is hereby given that certain written commitments and agreements were made in connection with the zoning of all or part of the Property in connection with Ordinance 61-10-98, and such commitments and agreements are hereby incorporated by reference.

Section 6.25 *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) 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; and

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

In no event shall the following 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 6.26 Fences. No fencing, landscape screening, or walls may be constructed or installed until after architectural approval is obtained from the Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee. 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 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 Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Non-professionally installed fences may be inspected by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control 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. In general, fences shall be located on the property line, one foot within the property line, or three feet within the property line; provided, however, that no fence shall be located any closer to the front Lot line than the rear foundation line of the Dwelling Unit.

Fences are to be vinyl coated chain link, wrought iron, or cedar. Further, all wooden fences are to be dog-eared, flattop shadow box style with 1" x 6" vertical boards, and are to remain unpainted. No fence shall be constructed until its materials, design, and location are first approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing. All approvals of landscape screening materials, design, and location shall be on an individual basis.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Declarant, during the Development Period, and thereafter to the Board of Directors and/or the Architectural Control 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.

Non-professionally installed fences may be inspected by the Architectural Control 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.

Section 6.27 *Animal Kennels.* Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are to be connected to the Dwelling Unit must be approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.28 *Mini Barns and Outbuildings.* No mini barn, outbuilding, or other structure which is detached from a Dwelling Unit shall be constructed until after it is approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. All such mini barns and outbuildings shall have siding and roofing which match the existing Dwelling Unit, and shall not exceed (i) 120 square feet, and (ii) 10 feet in height.

Section 6.29 *Playground/Recreational Equipment.* No playground or recreational equipment shall be placed or constructed upon a Lot until after it is approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. All such playground or recreational equipment shall be constructed of wood and not metal.

Section 6.30 *Pools.* Above ground swimming pools are prohibited on the Property.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 7.1 *By Owners.* Except as specifically provided in this Declaration or in any Supplemental 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.

Section 7.2 *Common Properties 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, including, but not limited to, fertilizing, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) maintenance of any entry signs, permanent subdivision identification sign, landscaping, mounding, fences, trails, pedestrian paths, multi-purpose fields, swimming pools, wading pools, bath houses, playground equipment, and/or any other improvements 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; and,

(iv) the maintenance of any brick surface installed by Declarant on any internal street or entryway.

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.

ARTICLE VIII

Insurance

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover 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 Common Area owned by the Associations, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 *Fidelity Bonds.* 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.

Section 8.3 *Miscellaneous Insurance Provisions.* The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 *Casualty and Restoration.* Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 *Insufficiency of Insurance Proceeds.* If the insurance proceeds 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, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 *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.

ARTICLE IX

Mortgages

Section 9.1 *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 real estate 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 therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 *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 maybe 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 9.3 *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 9.4 *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 or lease a unit acquired by the mortgagee.

Section 9.5 *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 X

General Provisions

Section 10.1 *Right of Enforcement.* In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner

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 10.2 *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 10.3 *Assignment.* Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant with the Recorder of the County in which the Property is located. After such assignment is recorded with the Recorder of the County in which the Property is located, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

Section 10.4 *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 at least seventy-five percent (75%) of the then Owners. 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. Except as prohibited in the paragraph immediately below, the Declarant reserves the right and power to amend this Declaration without the approval of the Owners: (i) to correct or clarify the legal description of the Property or the Additional Real Estate; (ii) to correct clerical or typographical errors; (iii) to make nominal changes in the Declaration; (iv) to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency); or (v) to the extent necessary to enable the Declarant to meet any other reasonable need or requirement, including those associated with the completion of the development of the Property and to facilitate the making or marketing of first mortgages upon any lots. Notwithstanding anything herein to the contrary, the Declarant may unilaterally record any Supplementary Declaration. Any amendment must be recorded.

Neither the Association, the Owners nor Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements and rights of way for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

(c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 10.5 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

IN WITNESS WHEREOF, BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership, has caused this Declaration to be executed as of the date first written above.

BEAZER HOMES INDIANA LLP

By: Beazer Homes Corp., its Managing Partner

By: _____
(Signature)

Mike Mansfield
(Printed Name)

Its: Division President
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Mike Mansfield, the Division Realtor of Beazer Homes Corp., the Managing Partner of Beazer Homes Indiana LLP, an Indiana limited liability partnership, who acknowledged the execution of the foregoing document for and on behalf of said entity and stated that the facts contained therein are true and correct.

Witness my hand and Notarial Seal this 1 day of February, 2007.

Sandra J. Schuman
Notary Public Residing in Hamilton County, Indiana

My Commission Expires:
7-30-2010

Sandra J. Schuman
(Printed Signature)

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

Donald E. Williams COPY
Donald E. Williams

SANDRA J. SCHUMAN
NOTARY SEAL
HAMILTON COUNTY
NOTARY PUBLIC, STATE OF INDIANA
MY COMMISSION EXPIRES July 30, 2010

This instrument prepared by Donald E. Williams, Attorney-at-Law,
Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204

EXHIBIT A

Land Description
The Ridge Section One

A part of the Southeast Quarter of Section 26, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence North 89 degrees 34 minutes 40 seconds West (assumed bearing) along the South line of said Southeast Quarter 817.57 feet to the POINT OF BEGINNING; thence continuing along said south line, North 89 degrees 34 minutes 40 seconds West 648.57 feet to a point on a curve concave to the left having a radius of 520.00 feet, the radius point of which bears South 49 degrees 01 minute 06 seconds West; thence along said curve an arc length of 198.45 feet to a point which bears North 27 degrees 09 minutes 10 seconds East from the radius point; thence North 62 degrees 50 minutes 50 seconds West 220.84 feet to a point on the East line of Whitcomb Ridge Section 5 Secondary Plat, recorded as Instrument Number 200200014787 in Plat Cabinet 2, Slide 753 in the Office of the Recorder of Hamilton County, Indiana, the following three (3) courses being along the East line of said Whitcomb Ridge Section 5 Secondary Plat: 1) thence North 16 degrees 51 minutes 03 seconds East 232.79 feet; 2) thence North 28 degrees 50 minutes 45 seconds East 234.76 feet; 3) thence North 09 degrees 54 minutes 38 seconds East 177.84 feet; thence South 80 degrees 21 minutes 31 seconds East 589.35 feet; thence North 67 degrees 52 minutes 45 seconds East 120.00 feet, thence North 22 degrees 07 minutes 15 seconds West 39.63 feet; thence North 67 degrees 52 minutes 45 seconds East 54.00 feet; thence North 46 degrees 26 minutes 36 seconds East 455.70 feet; thence South 43 degrees 33 minutes 24 seconds East 195.46 feet; thence South 20 degrees 54 minutes 10 seconds West 64.61 feet; thence South 70 degrees 25 minutes 21 seconds East 121.06 feet to a point on a curve concave to the right, having a radius of 1231.00 feet, the radius point of which bears North 70 degrees 25 minutes 21 seconds West from said point; thence along said curve an arc length of 72.03 feet to a point which bears South 67 degrees 04 minutes 12 seconds East from the radius point; thence South 67 degrees 04 minutes 12 seconds East 54.00 feet to a point on a curve concave to the right, having a radius of 1285.00 feet, the radius point of which bears North 67 degrees 04 minutes 12 seconds West from said point; thence along said curve an arc length of 8.75 feet to a point which bears South 66 degrees 40 minutes 48 seconds East from the radius point; thence South 66 degrees 40 minutes 48 seconds East 110.00 feet; thence South 66 degrees 35 minutes 48 seconds East 40.63 feet point on a non-tangent curve concave Northwesterly having a central angle of 15°16'35" and a radius of 1,435.00 feet, said point also being a point on the West line of a parcel of ground conveyed to the City of Noblesville in a Warranty Deed recorded as Instrument Number 200300012802 in said Recorder's Office, the following six (6) courses being along said West line; 1) thence Southwesterly along the arc of said curve 382.62 feet (said arc being subtended by a chord having a bearing of South 31 degrees 02 minutes 30 seconds West and a length of 381.48 feet); 2) thence South 45 degrees 27 minutes 48 seconds West 158.02 feet; 3) thence South 51 degrees 02 minutes 04 seconds West 335.27 feet; 4) thence South 45 degrees 02 minutes 32 seconds West 50.00 feet; 5) thence South 33 degrees 49 minutes 38 seconds West 51.68 feet; 6) thence South 38 degrees 31 minutes 11 seconds West 28.71 feet to the Point of Beginning, containing 25.13 acres, more or less.

EXHIBIT B

A part of the Southeast Quarter of Section 26, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Section 26; thence North 89°34'40" West (assumed bearing) along the South line of said Southeast Quarter a distance of 817.57 feet to the southeast corner of The Ridge Section One, the plat of which is recorded as Instrument Number 2007000172 in the Office of the Recorder of Hamilton County, Indiana; thence along the east line of said plat the next six (6) courses, (1) North 38°31'11" East 28.71 feet; (2) thence North 33°49'38" East 51.66 feet; (3) thence North 45°02'32" East 50.00 feet; (4) thence North 51°02'04" East 335.27 feet; (5) thence North 45°27'38" East 159.02 feet to a point on a non-tangent curve, concave northwesterly, having a radius of 1435.00 feet; (6) thence northeasterly along said curve an arc length of 382.62 feet, said curve being subtended by a chord bearing North 31 degrees 02 minutes 30 seconds East 381.48 feet, to the POINT OF BEGINNING; thence along the north line of the aforementioned plat the next 13 courses, (1) North 66°35'48" West 40.63 feet; (2) thence North 66°40'48" West 110.00 feet to a point on a non-tangent curve concave northwesterly having a radius of 1285.00 feet; (3) thence northeasterly along said curve an arc length of 8.75 feet, said curve being subtended by a chord bearing North 23°07'30" East 8.75 feet; (4) thence North 67°04'12" West 54.00 feet to a point on a non-tangent curve concave northwesterly having a radius of 1231.00 feet; (5) thence northeasterly along said curve an arc length of 72.02 feet, said curve being subtended by a chord bearing North 21°15'14" East 72.01 feet; (6) thence North 70°25'21" West 121.06 feet; (7) thence North 20°54'10" East 64.61 feet; (8) thence North 43°33'24" West 195.40 feet; (9) thence South 46°26'36" West 455.70 feet; (10) thence South 67°52'45" West 54.00 feet; (11) thence South 22°07'15" East 39.63 feet; (12) thence South 67°52'45" West 120.00 feet; (13) thence North 80°21'31" West 589.35 feet to a point on the east line of Whitcomb Ridge Section 5 Secondary Plat, recorded as Instrument Number 200200014787 in Plat Cabinet 2, Slide 753 in the Office of the Recorder of Hamilton County, Indiana, thence along said east line North 04°43'20" West a distance of 499.68 feet to a point on the North line of the South Half of said Southeast Quarter; thence South 89°19'06" East along said North line a distance of 337.60 feet to the Southwest corner of the Northeast Quarter of said Southeast Quarter; thence North 00°34'28" East along the West line of the Northeast Quarter of said Southeast Quarter a distance of 910.66 feet; thence South 89°03'34" East a distance of 1,269.30 feet to a point on the West line of a parcel of ground conveyed to the City of Noblesville in a Warranty Deed recorded as Instrument Number 200300012802 in said Recorder's Office (the following three (3) courses being along said West line); (1) thence South 00°37'48" West a distance of 856.67 feet; (2) thence South 05°55'52" West a distance of 54.12 feet to a point on a non-tangent curve concave Northwesterly having a radius of 1,435.00 feet; (3) thence Southwesterly along the arc of said curve a distance of 570.37 feet (said arc being subtended by a chord having a bearing of South 12°01'02" West and a length of 566.62 feet; to the POINT OF BEGINNING. Containing 42.755 acres, more or less.