DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PEBBLEBROOK AMENITY ASSOCIATION

THIS DECLARATION (hereinafter called "the Declaration" or "this Declaration"), made this 23rd day of December, 1997, by The Villages at Pebblebrook, L.P., The Villages of Pebblebrook Homeowners Association, Inc., and Augusta Village Homeowners Association, Inc. (hereinafter collectively referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant has specific authority and control over real estate in Hamilton County, Indiana, (more particularly described in Exhibit "A" attached hereto and incorporated herein by reference) hereinafter referred to as the "Real Estate" and owns a certain portion of land; and

WHEREAS, Declarant and those Associations desire to provide for the preservation and enhancement of the common Amenity therein contained, and to this end, Declarant desires to subject the Real Estate and each owner of all or part thereof to the terms of this Declaration, as hereinafter provided; and

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

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a non-profit corporation under the name Pebblebrook Amenity Association, Inc., or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Associations and Owners as herein defined shall be members of the Pebblebrook Amenity Association and shall be subject to the provisos, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.
ARTICLE I
DEFINITIONS

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

A. "Applicable Date" shall be the date that the Association is turned over to the members by the original incorporators and Board of Directors either by passage of time, resignation of Directors or through any other means provided herein.

B. "Associations" shall mean The Villages at Pebblebrook Homeowners Association, Inc., an Indiana nonprofit corporation, Augusta Village Homeowners Association, Inc., an Indiana nonprofit corporation, Pebblebrook Amenities Association, an Indiana nonprofit corporation, or any other Association which Declarant has caused, or will cause, to be incorporated in conjunction with the development of the Real Estate.

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

D. "Amenity Association" shall mean the Pebblebrook Amenities Association, Inc., an Indiana nonprofit corporation which Declarant has or will cause to be organized and incorporated under said name or a similar name, its successors and assigns.

E. "Common Amenity Area" shall mean (i) those portions, if any, of the Property shown upon any recorded subdivision plat of the Property, or any part thereof (including the initial Plat) designated as the Amenity area (reserving, however, unto Declarant the right to re-plat any of such areas as part of one (1) or more Lots), other than portions thereof (such as streets) which are dedicated to the public, whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, and (ii) such portions of the Property (if any) as are hereafter declared to be "Common Amenity Area" described in Exhibit A attached hereto and incorporated herein.

F. "Declarant" shall mean The Villages at Pebblebrook, L.P., Augusta Village Homeowners Association, Inc., The Villages at Pebblebrook Homeowners Association, Inc., and any successors and assigns of Declarant who it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

G. "Development" shall mean any improvement to the Real Estate.
I. "Home" shall mean a residential housing unit designed or intended for use as living quarters for one family or housekeeping unit.

J. "Initial Plat" shall mean the subdivision plat(s) of the Real Estate

K. "Lot" shall mean and refer to any and each undeveloped plot of land included in the Property (with the exception of Common Amenity Area) designed and intended for use as a building or development site.

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

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

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

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

P. "Parcel" shall mean any portion of the property which will be or has been developed and will benefit from the Common Amenity Area or will have access from the Common Amenity Area.

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

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

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.
ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. Villages of Pebblebrook Homeowners Association, Inc hereby relinquishes any and all authority for the care operation and maintenance of the Amenity area and Pebblebrook Amenity Association, Inc hereby accepts such authority. As of the date of execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot or member of any of the Associations is at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration; or (iii) by becoming a member in any of the Associations which are members of the Amenity Association. By acceptance of such deed, execution of such contract or undertaking such occupancy or such commencement of membership, each person acknowledges the rights and powers of Declarant and of the Amenity Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Amenity Association, the Owners and subsequent Owners of each of the Lots or parcels, and subsequent members of the member Associations affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN AMENITY ASSOCIATION

Section 1. Membership. All Associations heretofor created, except as herein provided to the contrary, shall be entitled and required to be a member of the Amenity Association. Consequently, each Owner is subject to the Amenity Association through membership in an Association as herein defined. Such Owners shall be governed by the Declarations, Covenants and Restrictions established for the Association to which they belong. Except as herein otherwise expressly provided, no person or entity other than an Association as herein defined may be a member of the Amenity Association, and a membership in the Amenity Association may not be transferred.

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

Section 3 Voting. The Amenity Association shall have one (1) class of voting membership, as follows:

Members shall be the following Associations: Villages of Pebblebrook Homeowners Association; Augusta Village Homeowners Association; and owners of undeveloped portions of the Real Estate. Augusta Village Homeowners Association, Inc. shall be entitled to one (1) vote and The Villages of Pebblebrook Homeowners Association, Inc. shall be entitled to two (2) votes with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. There can be no split vote by a member. Prior to or at the time of any meeting at which a vote is to be taken, each member shall file with the Secretary of the Amenity Association the name of the voting person entitled to a vote at such meeting, unless such member has filed a general voting authority with the Secretary applicable to all votes until rescinded.

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

Section 5. Board of Directors. The Members shall elect a Board of Directors of the Amenity Association as prescribed by the Amenity Association’s Articles and By-Laws. The Board of Directors shall manage the affairs of the Amenity Association. After the Applicable Date, the Board shall consist of three (3) persons all designated by the Members pursuant to the Articles of Incorporation & By-Laws.

ARTICLE IV
PROPERTY RIGHTS

Section 1. General Provisions.

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

B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Amenity
Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2012, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Right of Enjoyment. Every Member, along with the members of Member if Member is an Association, shall have a non-exclusive right and easement of enjoyment in and to the Common Amenity Area limited, however, to and for the uses and purposes for which any portion of the Common Amenity Area is designed and intended. Such right and easement shall be appurtenant to and shall pass with the title to every Lot or Parcel, subject to the following provisions:

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

B. The right of the Amenity Association to suspend the voting rights of a Member for any period during which any assessment remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

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

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

Section 3. Amenity Association's Rights and Obligations

A. The Amenity Association shall have the obligation to manage, repair, maintain, improve and operate the Common Amenity Area and to perform all additional obligations described in this Declaration.

B. The Amenity Association shall have the right to mortgage all or any portion of the Common Amenity Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 3 A. hereinabove, provided that the rights of such mortgagee in the Common Amenity Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgagee shall have received the prior written approval specified herein below.

C. The Amenity Association shall have the right to dedicate or transfer all or any part of the Common Amenity Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Amenity Area for utilities and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required herein below. The Amenity Association may enter into agreements on behalf of the members for the providing of services and utilities to the property
and/or the members so long as the rates in such agreement(s) are at or below the prevailing market rate for such services in the Greater Indianapolis area, such agreement does not solely benefit the Declarant and in no way should the Board of Directors benefit through the contracts other than by the favorable rates received.

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

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

Section 4. Declarant's Rights. Declarant shall have the same rights as any other Member except as otherwise specified herein. In addition, until the last parcel of land owned by Declarant which is subject to this Declaration is transferred, Declarant shall have the right and easement over the Common Amenity Area for the completion of improvements and making repairs to improvements (whether on the Common Amenity Area, or upon unsold Parcels, or upon other portions of the Real Estate, and the right to maintain signs upon the Common Amenity Area and any other portions of the Property other than Lots owned by persons or entities other than Declarant) for the purpose of marketing homes, the golf course and to invite and escort the public thereon for such purpose.

Section 5. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any subdivision plat of any part of the Property shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Amenity Area to the public or to or for any public use or purpose whatsoever, all of such Common Amenity Area being reserved to the Members and the Amenity Association as provided in this Declaration, but subject, however, to the rights of the Amenity Association and the Declarant to thereafter dedicate portions of such Common Amenity Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 6. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any Home or any improvement encroaches upon any part of the Common Amenity Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Structure shall exist for the continuance of any such encroachment on the Common Amenity Area.
Section 7. Title to Common Amenity Area. Declarant hereby covenants that it shall convey an easement which shall be designated as a Landscape Easement in favor of the Amenity Association which shall be a part of the Common Amenity Area. The title to the underlying parcel shall, Any parcels adjoining the Common Amenity Area conveyed by Declarant shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and restrictions then of record.

ARTICLE V
ASSESSMENTS

Section 1. Personal Obligations. Each Member and each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Amenity Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Amenity Association, expenses for the upkeep, maintenance, repair and replacement of the Common Amenity Area and all other expenses incurred or to be incurred by the Amenity Association for or in connection with the performance by the Amenity Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of liability insurance for the Common Amenity Area and any other common property, snow removal, and trash removal (if provided by the Amenity Association); street lighting (if provided by the Amenity Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Amenity Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Amenity Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in a lump sum in advance of such twelve month periods or if the Amenity Association so allows, in twelve (12) equal monthly installments on the first day of each and every month or, if so determined by the Amenity Association, in such other periodic installments as may be specified by the Amenity Association. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the member. Said personal obligation of a Member shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana.

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

Section 3. Annual Assessments. Until December 31, 1998, the total maximum annual budget assessment shall not exceed $2,600.00.

A. From and after December 31, 1998, the maximum annual budget assessments may be increased each year not more than ten percent (10%) above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of membership.

B. From and after December 31, 1998, the maximum annual budget assessments may be increased by more than ten percent (10%) above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose.

C. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Amenity Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, or maintenance of the Common Amenity Area, Amenities or other such property/improvements for which the Amenity Association is responsible, provided that any such assessment shall have the assent of not less than two thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Calculation of Member’s Share of Annual & Special Assessments. The Amenity Association Members shall pay assessments due hereunder whether annual or special in nature according to the number of units assigned to that member which unit assignment shall be according to the following schedule:

<table>
<thead>
<tr>
<th>Member</th>
<th>Number of Units</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Villages of Pebblebrook Homeowners Association</td>
<td>198</td>
<td>83%</td>
</tr>
<tr>
<td>Augusta Village Homeowners Association</td>
<td>40</td>
<td>17%</td>
</tr>
<tr>
<td>Total</td>
<td>238</td>
<td>100%</td>
</tr>
</tbody>
</table>

Section 6. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast
sixty percent (60%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units. Annual assessments shall be collected in a lump sum or if the Amenity Association so chooses, on a monthly basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines. The provisions of this Article V are subject to the provisions of Section 13 of this Article V.

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

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

Section 10. Non-Payment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eighteen percent (18%) per annum and shall become a continuing lien in favor of the Amenity Association on the Parcel against which assessed and the improvements thereon, and the Amenity Association may bring an action at law or in equity against the person personally obligated to pay the same, or against the Member obligated to pay the assessment including interest, costs and reasonable attorneys’ fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Amenity Association may also enforce and foreclose any lien it has or which may exist for its benefit.

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

Section 12. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. The sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to mortgage foreclosure or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Parcel from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same or from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Parcels as a common expense.

ARTICLE VI
OTHER RIGHTS AND OBLIGATIONS OF THE AMENITY ASSOCIATION

Section 1. The Common Amenity Area. The Amenity Association, subject to the rights and obligations of the Members as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Amenity Area (as detailed on Exhibit A), Amenities and all improvements (if any) thereon (including equipment related thereto), and shall keep the same in good order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Parcels) shall include, but not be limited to, the maintenance and repair of the Common Amenity Area, Amenities, and all other improvements or material located within or used in connection with the Common Amenity Area.

Section 2. Services. The Amenity Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as
well as such other personnel as the Amenity Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Amenity Association or by any person or entity with whom or which it contracts. The Amenity Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Amenity Association may arrange with others to furnish trash collection and other common services. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or an entity owned or controlled by the same persons as Declarant, must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

Section 3. Personal Property for Common Use. The Amenity Association may acquire and hold for the use and benefit of all of the Members tangible and intangible personal property and may dispose of the same by sale or otherwise.

Section 4. Hazard and Liability Insurance for Common Property. The Amenity Association shall procure extended coverage insurance on the Common Amenity Area, reconstruction of such insurable Common Amenity Areas and other common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Members or First Mortgagors on any of the undeveloped Parcels may, jointly or singly, pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Amenity Area and other common property, and Members or First Mortgagors making such payments shall be owed immediate reimbursement therefore from the Amenity Association. The Amenity Association is authorized to enter into an agreement in favor of all First Mortgagors of undeveloped parcels.

ARTICLE VII

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGORS

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

Section 2. Notice of Action. Upon written request to the Amenity Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Parcel and the address of such party (a holder of a First Mortgage on a Parcel who has so requested such notice shall be referred to herein as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage on a Parcel who has so requested such notice shall be referred to herein as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:
(A) Any condemnation loss or any casualty loss which affects a material portion of the project or any improvement on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of incorporation by an Owner of a Parcel subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;

(C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Amenity Association;

(D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article, and

(E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 3. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Parcel will not be subject to any right of first refusal or any similar restriction in favor of the Amenity Association or other Owners.

Section 4. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Parcel pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage shall not be liable for the unpaid assessments of the Parcel which were payable prior to the acquisition of title or possession of such Parcel by the First Mortgagee.

Section 5. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Parcels or their assigns (based upon one vote for each First Mortgage owned), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Members have given their prior written approval, neither the Amenity Association nor the Members shall be entitled to:

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

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

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

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

(1) voting;
(2) assessments, assessment liens or subordination of such liens;
(3) reserves for maintenance, repair and replacement of the Common Amenity Area (or exterior maintenance of Homes if applicable);
(4) insurance or Fidelity Bonds;
(5) rights to use of the Common Amenity Area;
(6) responsibility for maintenance and repair of the several portions of the project;
(7) boundaries of any Parcel;
(8) the interests in the general Common Amenity Area;
(9) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Parcel;
(10) any provisions which are for the express benefit of First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Parcels,

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

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

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

**Section 6. Examination of Books and Records.** First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Amenity Association, as set forth more fully in the By-Laws.

**Section 7. Payment of Taxes and Insurance.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Amenity Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Amenity Area or other common progeny, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Amenity Association.

**Section 8. Designation of Representative.** Any holder of a First Mortgage on a Lot or Home may designate a representative to attend meetings of members, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Member.

**Section 9. Distribution of Insurance Proceeds and Condemnation Awards.** No provision of this Declaration or the By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Amenity Area or other common progeny.

**ARTICLE VIII INSURANCE**

**Section 1. Maintenance of Insurance.** The Amenity Association shall maintain, to the extent reasonably available, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of the agencies and entities mentioned or referred to herein, m-wit

(A) Master or blanket type of policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Common Amenity Area (including all of the fixtures installed therein). Said policy shall afford, as a minimum, protection against the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement,
(2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

The name of the insured under such policies must be set forth therein substantially as follows:

The Pebblebrook Amenity Association, a non-profit corporation for the use and benefit of the individual Members.

The policies may also be issued in the name of an authorized representative of the Amenity Association, including any insurance Trustee with whom the Amenity Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Members. Loss payable shall be in favor of the Amenity Association (or insurance Trustee), as a trustee for each Member and each such Member's First Mortgagor. Each Member and each such Member's First Mortgagor, if any, shall be beneficiaries of the policy with respect to the Common Amenity Area equally with each other Lot. Policies must provide for the recognition of any insurance Trust Agreement.

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

(B) Worker's Compensation, occupational disease and like insurance (if the Amenity Association has eligible employees),
(C) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:

(1) covering events occurring anywhere on the Common Amenity Area (and public and private ways) or arising out of or in connection with the use, Ownership or maintenance of the Common Amenity Area;

(2) covering, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Amenity Area, and legal liability arising out of lawsuits related to employment contracts of the Amenity Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;

(3) insuring each officer and member of the Board of Directors, the managing agent and each Member and with cross liability endorsement to cover liabilities of the Members as a group to an Member and with a "Severability of interest Endorsement" which would preclude the insurer from denying the claim of an Member for the negligent act of another Member, occupant or the Amenity Association, and

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

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

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

Section 2. Members' Individual Policies. Each Member should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Parcel, his Home, and other personal progeny, and fixtures, furniture, furnishings, and other personal progeny, and fixtures and other property supplied or installed by him or a previous Member or tenant.

Section 3. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Amenity Association, the Association's authorized representative, including any Trustee with whom the Association may enter into any insurance Trust Agreement or any successor to such Trustee (each of whom shall be referred to herein as the "Insurance Trustee").

17
who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any insurance Trustee must be a corporation or Amenity Association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Section 4 Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessments levied by the Association, and such assessments shall be held in a separate escrow account of the Amenity Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

ARTICLE IX

EMINENT DOMAIN

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

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

ARTICLE X

GENERAL PROVISIONS

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

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

Section 3. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Notices. Any notice required to be sent to any Member of the Amenity Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Amenity Association at the time of such mailing.

Section 5. Captions. The Article and Section headings herein are intended for convenience of reference only and shall not be given any substantive effect.

Section 6. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

ARTICLE XI

AMENDMENT

Except as hereinafter provided, this Declaration may be amended during the initial term provided above by an instrument signed by not less than ninety percent (95%) of the Members and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Members. Certain amendments also require additional approval as specified in this Declaration.

The foregoing notwithstanding, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval, as the case may be, so long as Declarant owns a Lot or Lots. The foregoing notwithstanding, this Declaration may
also be amended by Declarant at any time prior to the Applicable Date if it has an Membership interest in the Property.

ARTICLE XII
ENFORCEMENT

Section 1. Remedies. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Declarant and Amenity Association, any person or entity having any right title or interest in the Real Estate (or any part thereof), or any person or entity having any right, title or interest in a Lot which is now or hereafter made subject to the Declaration, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided however, that neither the Declarant nor the Amenity Association shall be liable for damages of any kind to any person for failing to enforce the provisions of this Declaration.

In Witness whereof, Declarant has caused this document to be executed as of the day of , 1997.

The Villages at Pebblebrook, L.P.
as Indiana limited partnership

By: 

Printed: 

Its: 

The Villages of Pebblebrook Homeowners Association,
as Indiana nonprofit corporation

By: 

Printed: 

Its: 

20
Augusta Village Homeowners Association, Inc. an Indiana non-profit corporation

By: [Signature]

Printed: Paul E. Burkhard, Jr.

Its: President

STATE OF INDIANA ) SS: 
COUNTY OF Marion )

ACKNOWLEDGMENT

Before me, a Notary Public in and for said County and State, personally appeared

Paul E. Burkhard, Jr., the President of The Villages at Pebblebrook L.P., who acknowledged the execution of the foregoing Covenants, Conditions & Restrictions on behalf of The Villages at Pebblebrook, L.P.

Witness my hand and Notarial Seal this 8th day of December, 1997.

My Commission Expires: 6-3-2001

Notary Public

Residing in Marion County

Printed Name

STATE OF INDIANA ) SS: 
COUNTY OF Marion )

ACKNOWLEDGMENT

Before me, a Notary Public in and for said County and State, personally appeared

Paul E. Burkhard, Jr., the President of The Villages at Pebblebrook Homeowners Association, an Indiana nonprofit corporation, who acknowledged the execution of the foregoing Covenants, Conditions & Restrictions on behalf of The Villages at Pebblebrook Homeowners Association, an Indiana nonprofit corporation.

Witness my hand and Notarial Seal this 8th day of December, 1997.

My Commission Expires: 6-3-2001

Notary Public

Residing in Marion County

Printed Name
STATE OF INDIANA

COUNTY OF ____________________ )

) SS:

AKNOWLEDGMENT

Before me, a Notary Public in and for said County and State, personally appeared

Providing Authorization, the President of Augusta Village

Homeowners Association, an Indiana nonprofit corporation, who acknowledged the execution

of the foregoing Covenants, Conditions & Restrictions on behalf of Augusta Village

Homeowners Association, an Indiana nonprofit corporation.

Witness my hand and Notarial Seal this ___ day of ___ , 1997.

My Commission Expires: ____________________________

Notary Public

Residing in ____________________ County

Prepared by ____________________

Printed Name

Platinum Properties
EXHIBIT A

LAND DESCRIPTION

THE VILLAGES AT PEBBLEBROOK RECREATIONAL AREA

The parcel of real estate, Section 33, Township 19, Range 04, designated as Lot 214 on the Secondary Plat of The Villages at PebbleBrook Recreational Area, containing 1.55 Acres, recorded on April 21, 1994, as Instrument Number 9418837 (Plat Cabinet 1, Slide 408) in the Office of the Recorder of Hamilton County, Indiana.