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STATE OF INDIANA
COUNTY OF PORTER

STATE OF INDIANA
PORTER COUNTY
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JACQUELYN M. STERLING
RECORDER

References: Instrument No. 89-17939
Miscellaneous Record 122
Page 585

Instrument No. 94-22795
Miscellaneous Record 146
Page 38

CERTIFICATE OF AMENDMENT
FOR
SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR SAND CREEK

THIS SECOND AMENDED AND RESTATED DECLARATION is made this 29th day of NOVEMBER, 2000 by Lake Erie Land Company, an Indiana corporation (the "Declarant").

WITNESSETH

WHEREAS, on November 9, 1989, that certain Declaration of Covenants and Restrictions for Sand Creek Homeowners Association was recorded as Instrument Number 89-17939 in Miscellaneous Record 122, Page 585, in the Office of the Recorder of Porter County, Indiana (hereinafter referred to as the "Original Declaration"); and

WHEREAS, on August 16, 1994, that certain Amended and Restated for Declaration of Covenants and Restrictions for Sand Creek was recorded as Instrument Number 94-22795 in Miscellaneous Record 146, Page 38, in the Office of the Recorder of Porter County, Indiana (hereinafter referred to as the "Amended and Restated Declaration"); and

WHEREAS, pursuant to the terms of Section 18.2(a) of the Amended and Restated Declaration, Declarant may unilaterally amend the Amended and Restated Declaration for any purpose until termination of the Class "B" membership; and

WHEREAS, pursuant to Section 6.6 of the Amended and Restated By-Laws of Sand Creek Homeowners Association, Inc. ("Amended and Restated By-Laws"), Declarant may unilaterally amend the Amended and Restated By-Laws so long as it still owns property described in Exhibits "A" or "B" of the Amended and Restated Declaration for development, provided the amendment has no material adverse effect upon any right of any Owner; and

WHEREAS, Declarant desires to amend and restate the Amended and Restated Declaration and the Amended and Restated By-laws to provide the direct vote of members in the Association instead of representative voting; and

WHEREAS, the Class "B" membership has not terminated, the Declarant still owns property described in Exhibits "A" or "B" of the Amended and Restated Declaration for development, and there is no material adverse effect to the rights of any Owner; and

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WHEREAS, Section 14.4(b) of the Amended and Restated Declaration requires the consent of at least 67% of the Class "A" votes of the Association and the approval of 51% of the Eligible Holders of first Mortgages in order to amend any provisions of the Amended and Restated Declaration or Amended and Restated By-Laws which establish, provide for, govern, or regulate voting; and

WHEREAS, at least 67% of the Class "A" votes of the Association have consented to and 51% of the Eligible Holders of first Mortgages have approved the adoption of the Second Amended and Restated Declaration and the Second Amended and Restated By-Laws attached as Exhibit "E" thereto;

NOW, THEREFORE, the Amended and Restated Declaration and the Amended and Restated By-Laws are hereby further amended and restated by striking the body of the Amended and Restated Declaration in its entirety, excluding Exhibits "A," "B," "C," and "D" to the Amended and Restated Declaration which shall be incorporated into the Second Amended and Restated Declaration which follows by this reference, and striking the Amended and Restated By-Laws attached to the Amended and Restated Declaration as Exhibit "E" and simultaneously substituting the following in their place:

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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SAND CREEK**

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SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SAND CREEK

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (hereinafter this "Declaration") is made this 29th day of NOVEMBER, 2000, by Lake Erie Land Company, an Indiana corporation (the "Declarant").

This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

All of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Nothing in this Declaration shall be construed as superseding or abrogating the provisions of the Horizontal Property Law, Indiana Code §32-1-6-1, et seq. (1989).

Article I
DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Sand Creek Homeowners Association, Inc., as may be amended, filed with the Secretary of State of the State of Indiana.

1.3. "Association": Sand Creek Homeowners Association, Inc., an Indiana nonprofit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.3.

1.5. "Board of Directors" or "Board": The body responsible for administration of the association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Indiana corporate law.

1.6. "Builder": Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "By-Laws": The By-Laws of Sand Creek Homeowners Association, Inc., attached as Exhibit "E," as they may be amended.

1.8. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.2 of the By-Laws.

1.9. "Common Area": All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.12. "Declarant": Lake Erie Land Company, an Indiana corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.13. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II of this Declaration.

1.14. "Golf Course": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which is privately owned by Persons other than the Association and which is operated as a golf course.

1.15. "Master Plan": The land plan for the development of the Sand Creek community prepared by Lake Erie Land Company, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article IX.

- 1.16. "Member": A Person entitled to membership in the Association.
- 1.17. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.
- 1.18. "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.19. "Mortgagor": Any Person who gives a Mortgage.
- 1.20. "Neighborhood": Each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each condominium, townhome development, cluster home development, and single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Section 1.22) having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 3.4.

1.21. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 10.1 and 10.4.

1.22. "Neighborhood Association": Any condominium association or other owners association having concurrent jurisdiction over any Neighborhood.

1.23. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

1.24. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.25. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.26. "Private Amenity(ies)": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the golf course, which is so located.

1.27. "Properties": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.28. "Special Assessment": Assessments levied in accordance with Section 10.6.

1.29. "Specific Assessment": Assessments levied in accordance with Section 10.7.

1.30. "Supplemental Declaration": An instrument filed in the Office of the Recorder of Porter County, Indiana pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.31. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of any Neighborhood Association, property dedicated to the public, or property designated by Declarant intended for development as rental property. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Article II PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and non-exclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or rules of the Association after notice and a hearing pursuant to Section 3.22 of the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission or other fees for the use of any recreational facility situated upon the Common Area;

(g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area, if any, designated "Exclusive Common Areas," as more particularly described in Section 2.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Exclusive Common Area. Certain portions of the Common Area may be, but shall not be required to be, designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas, if any, may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the plat of survey relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon the vote of Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the consent of the Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

Article III
MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Indiana.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Neighborhoods. Every Unit shall be located within a Neighborhood. The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law. Any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, as described in Section 5.3 of the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Each Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of sixty-seven (67%) percent of the Units within the Neighborhood, the Association shall provide the requested services. The cost of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article X hereof.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to redesignate Neighborhood boundaries; provided, two or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

The Owner(s) of a majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a plat of survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board, in its sole discretion, denies such application in writing within 30 days of its receipt thereof. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

3.4. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 10.12.

In any situation where there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.2 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.3 of the By-Laws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Article IV **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant or its designees may convey to the Association improved or unimproved real estate located within the properties described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association, through the Board, in accordance with Section 3.22 of the By-Laws, may exercise self-help to cure

violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration or the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including without limitation attorneys fees and court costs, reasonably incurred in such action from the violating Owner.

If permitted by law, the Association, by contract or other agreement, may enforce Town of Chesterton ordinances, if applicable.

Should the Association fail or refuse to act on its obligations regarding Common Area as set forth in this Declaration, the Town of Chesterton shall have the authority to perform such obligations of the Association as necessary to ensure compliance with the requirements of this Declaration concerning Common Area. Costs incurred by the Town of Chesterton pursuant to this paragraph in performing the obligations of the Association required under this Declaration concerning Common Area may be charged against, and, if so charged, shall be paid by, the Declarant until the termination of the Class "B" Control Period. Thereafter, such costs may be charged against, and, if so charged, shall be paid by, the Association. This provision shall not be deemed to create an obligation to act on the part of the Town of Chesterton. In recognition of the fact that the provisions of this paragraph are for the benefit of the Town of Chesterton, no amendment to this paragraph, and no amendment to other provisions of this Declaration or the By-Laws in derogation of any of the provisions of this paragraph, may be made without the prior written approval of the Town of Chesterton.

4.4. Implied Rights, Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Porter County, Indiana, or to any other local, state, or federal governmental entity.

4.7. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered

insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its lessees that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.8. Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 10.7(b). Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

Article V MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all landscaping and other flora, parks, lakes, structures, and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;
- (b) landscaping within public rights-of-way within or abutting the Properties;
- (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams

(earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2. Neighborhood's Responsibility. Upon resolution of the Board, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a wall, other than a wall which forms part of a building, is constructed shall maintain and irrigate that portion of the Common Area between the wall and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway. Any Neighborhood Association whose common property abuts the bank or water's edge, or abuts a portion of the Common Area abutting the bank or water's edge, of any river, pond, stream, or wetland area within the Properties shall maintain and irrigate all landscaping between the

boundary of its common property and such bank or water's edge; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article XI hereof.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within such Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Section 10.7.

5.3. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit, in a manner consistent with the Community-Wide Standard and all applicable covenants, unless, such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner and/or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVI.

Article VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood and wind insurance and building ordinance coverage.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as agreed upon pursuant to Section 3.4(a). Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. The Association shall have no insurance responsibility for any portion of the Private Amenities.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Porter County, Indiana area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.22 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 10.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Indiana which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owner's Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, and liability insurance, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners hereunder, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 10.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article

XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

Article VII **NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Article VIII **CONDEMNATION**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

Article IX **ANNEXATION AND WITHDRAWAL OF PROPERTY**

9.1. Annexation Without Approval of Membership. Until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2013, whichever is earlier, Declarant, from time to time, may unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B." Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the Office of the Recorder of Porter County, Indiana. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

9.2. Annexation With Approval of Membership. The Association may annex real property other than that described on Exhibit "B," and after December 31, 2013, any property described on Exhibit "B," to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Office of the Recorder of Porter County, Indiana. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article IX for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

9.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B."

Article X **ASSESSMENTS**

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.6; and (d) Specific Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Indiana law) computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Board shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner shall be exempt from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

10.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units, notwithstanding the commencement date for assessments set forth in Section 10.9, or to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

10.3. Computation of Base Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.5.

The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other

sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.9 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.4. Computation of Neighborhood Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, other covenants applicable to the property, or the By-Laws specifically authorize the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and, if such services are provided, any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefited thereby and levied as a Neighborhood Assessment, or allocated in such manner as may be set forth in other covenants applicable to the property in such Neighborhood; provided, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to terminate the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.5. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Neighborhood Assessments, as appropriate, over the budget period.

10.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.7. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within a Neighborhood or within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Unit or Neighborhood to reimburse the Association for costs incurred in bringing the Unit or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, other covenants, the Articles, the By-Laws, and rules, provided the Board gives prior notice to the Unit Owner or the Members of the Neighborhood, as applicable, and an opportunity for a hearing.

10.8. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Indiana law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure in accordance with Indiana law.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien.

At any foreclosure proceeding, any Person, including but not limited to Declarant, the Association, and any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have

been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.9, including such acquirer, its successors and assigns.

10.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit owned by Persons other than Builders on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

10.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.11. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.12. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and
- (d) Property designated by Declarant for development as rental property.

Article XI

ARCHITECTURAL STANDARDS

11.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing

improvements, and planting or removal of landscaping) shall take place except in compliance with this Article and approval of the appropriate committee under Section 11.2. In addition, the approval requirements set forth herein shall apply to the proposed removal or clearing of any tree having a caliper of more than four inches at a point two feet above the ground. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Any Owner may remodel, paint or redecorate the interior of structures of a Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association or to improvements to the Private Amenities.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the two committees as described in subsections (a) and (b) below. The members of the Committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) New Construction Committee. The New Construction Committee (NCC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the NCC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may, at its option, either appoint the members of the NCC, who shall thereafter serve and may be removed in the Board's discretion, or combine the NCC and the MC (hereafter defined) into a single architectural review committee which shall assume all powers and responsibilities of both committees under this Declaration.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The MC may delegate its authority as to a particular Neighborhood to the Neighborhood Association, if any, so long as the MC has determined that such Neighborhood Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The NCC shall have the right to veto any action taken by the MC or a Neighborhood Association which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

11.3. Guidelines and Procedures.

(a) All construction activities within the Properties shall be governed by the design and development guidelines and application and review procedures (the "Design Guidelines") established for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines shall apply to any construction commenced after the date of their adoption.

The NCC shall have sole and full authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the Office of the Recorder of Porter County, Indiana, in which event the recorded version shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the NCC.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the NCC or MC fails to approve or to disapprove any application within 60 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the NCC pursuant to Section 11.5.

11.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.5. Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the cost of complying with the NCC guidelines or procedures shall not be considered a hardship warranting a variance.

11.6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the NCC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, compliance with building codes and other governmental requirements or the value of any improvement. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

11.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, which may include monetary fines imposed by the NCC, together with the interest at the maximum rate then allowed by law, and reasonable attorneys' fees may be assessed against the benefited Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, in addition to the fees, costs and fines provided in the preceding paragraph, may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.

Article XII

USE RESTRICTIONS AND RULES

12.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community. The Properties are subject to the land development, architectural, and design provisions set forth in Article XI, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which

such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Members representing at least 2/3 of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in By-Laws Section 2.4.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in By-Laws Section 2.4, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted, by a vote of 2/3 of the total Class "A" votes and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

In addition, each Owner acknowledges that parking of any vehicles on private or public streets, roads or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages is prohibited; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. This prohibition on parking on public streets shall not be amended or revoked without the prior written consent of the Town of Chesterton.

12.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property

restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) Alienation. No rule shall prohibit the transfer of title of any Unit, or require consent of the Board for the transfer of title of any Unit.

(g) Reasonable Rights to Develop. No rule or action by any Owner, the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, and in compliance with all rules in force at that time, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 12.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

12.5. Leasing of Units. There shall be no leasing of any Unit except for instances of undue hardship. Undue hardship, as used in this Section, shall mean; (i) the involuntary permanent job transfer of an Owner allowing insufficient time, as determined by the Board, to sell the Unit; (ii) the involuntary temporary job transfer of an Owner out of the immediate area with the intent of returning and residing in the Unit; or (iii) any other circumstance approved by the Board. The Board shall not unreasonably withhold its approval of a request to lease a Unit based on undue hardship. This section shall not apply to any leasing transaction entered into by the holder of any first mortgage on a Unit who becomes the title holder to a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

The Board may require a minimum lease term of up to 12 months. The Board may require that Owners use lease forms approved by the Board, but shall not impose any fee on the lease of any Unit greater than an amount reasonably based on the costs to the Association to administer that lease.

Article XIII **EASEMENTS**

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an

easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" or "B," of this Declaration, the Association, and the designees of each (which may include, without limitation, Porter County, Indiana and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board or Declarant.

13.3. Easement for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the non-exclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rain or snowfall or other natural disasters.

13.4. Easement to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an

easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Property.

13.5. Easement for Emergency Vehicles. The Properties are hereby burdened with an easement allowing all policemen, firemen, ambulance personnel, and similar emergency personnel entry to perform their duties.

This Section shall not be amended or revoked without the prior written consent of the Town of Chesterton.

13.6. Easement for Cross Drainage. Every Unit and the Common Area shall be burdened with an easement for natural drainage of storm water runoff from other portions of the Properties. No Person shall alter the natural drainage of storm water so as to affect the flow of drainage into the golf course.

Article XIV MORTGAGEE PROVISIONS

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

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws which is not cured within 60 days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or at least sixty-seven percent (67%) of the total Association vote entitled to cast consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

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

14.3. Other Provisions for First Lien Holders. To the extent possible under Indiana law:

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

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

14.4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 14.3(a) and (b), or to the addition of land in accordance with Article IX.

(a) The consent of at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Units to which at least sixty-seven (67%) percent of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

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

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

14.7. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.8. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Indiana law for any of the acts set out in this Article.

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

Article XV **PRIVATE AMENITIES**

15.1. General. Private Amenities are not part of the Properties nor are they Common Areas. Access to and use of the Private Amenities is strictly subject to the rules and procedures of the respective owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

15.2. Ownership and Operation of Private Amenities. All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in regard to the Private Amenities shall be effective unless set forth in an amendment to this Declaration executed by the Declarant and the owner of the Private Amenity.

The ownership and/or operation of the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Private Amenities by an independent Person; (b) the conversion of the ownership and/or operating structure of the Private Amenities to an "equity" club, in addition to such clubs as may now exist, or similar arrangement whereby the Private Amenities or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Private Amenities to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association; any Neighborhood Association or committee, or any Owner shall be required to effectuate such transfer or conversion.

15.3. Easements, Access and Parking. The Private Amenities shall have non-exclusive easements over the Common Areas for ingress and egress, utilities, and such other purposes as may be reasonably necessary or convenient to the establishment, operation, maintenance, repair and replacement of the Private Amenities. If the exercise of any such easement rights imposes wear and tear upon the Common Areas or other similar costs upon the Association, the owner of the Private Amenities being served by the easements shall be obligated to pay the Association such sums as may reasonably be required to reimburse the Association for the costs occasioned by the exercise of the easement rights but any such payment obligation shall be collected by the Association through periodic billing and not through admission fees or similar charges imposed and collected at the time Common Areas are being used.

The Private Amenities and its members (regardless of whether such members are Owners hereunder), their guests and invitees, and the employees, agents, contractors, and designees of the Private Amenities shall at

All times have a right and non-exclusive easement of access and use over all roadways and golf cart paths, if any, located within the Properties reasonably necessary to travel to and from the entrance to the Properties to and from the Private Amenities, respectively, and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and permitted members of the public shall have the right to park their vehicles on the roadways located within the Properties and have limited access over the Common Area and the common property of any Neighborhood Association at reasonable times before, during, and after functions held by/at the Private Amenities, which may include, without limitation, golf tournaments.

Neither the Association nor any Neighborhood Association shall exercise its authority over the Common Areas to frustrate the rights of the owners of the Private Amenities, their respective agents, successors and assigns, as well as their members, guests, invitees, employees, contractors, designees, and authorized users.

15.4. Architectural Control. Neither the Association, the Modifications Committee, nor any Neighborhood Association, committee, or board shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, any such Private Amenity without giving the Private Amenity at least fifteen days prior notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen days to approve or disapprove the proposal in writing delivered to the appropriate committee or association, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the fifteen day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Neighborhood Association, if any.

15.5. Golf Course. The following apply only to the Golf Course and not to any other Private Amenity:

(a) Every Unit and the Common Area and the common property of any Neighborhood Association is burdened with an easement permitting golf balls unintentionally to come upon such areas and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association or its Members (in their capacity as such); the owner(s) of the Private Amenities or their successors, successors-in-title, or assigns; any successor Declarant; any Builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for overspray of water from the irrigation system serving the Golf Course. Under no circumstances shall the Association or the owner(s) of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) The owner(s) of the Golf Course, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Area lying reasonably within range of golf balls hit from any golf course.

(d) The owner of the Golf Course, its respective agents, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation,

operation maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, utility lines, wires and drainage pipelines serving all or portions of the Golf Course.

(e) The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.

(f) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Golf Course, an easement to draw water from bodies of water within the Common Area for purposes of irrigation of the Golf Course and for access to and the right to enter upon the Common Area for installation and maintenance of any irrigation systems.

15.6. View Impairment. Neither the Declarant, the Association, nor the owner or operator of any Golf Course guarantees or represents that any view over and across the Golf Course from adjacent Units will be preserved without impairment. The owner of the Golf Course shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

15.7. Allocation of Costs. The Association may enter into a contractual arrangement or covenant to share costs with the Golf Course whereby the Golf Course will contribute funds for, among other things, maintenance of the Area of Common Responsibility.

15.8. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

15.9. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

Article XVI **DECLARANT'S RIGHTS**

Any or all rights and obligations of Declarant may be transferred to other Persons, but the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws and shall not be effective unless signed by Declarant and duly recorded in the Office of the Recorder of Porter County, Indiana. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property described in Exhibit "A" and Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sales of Units by Declarant and Builders shall continue, it shall be expressly permissible for the Declarant and Builders authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the

construction or sale of such Units, including, but not limited to, business offices, signs, and sales offices. The Declarant and Builder(s) authorized by Declarant shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned or leased by the Declarant or a Builder and any clubhouse or community center which may be owned by the Declarant or the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's written consent. Any attempted recordation without compliance herewith shall result in such instrument being void unless a consent of Declarant is subsequently recorded in the public records.

Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Sand Creek is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties (other than within said Owner's Neighborhood), or (b) changes in any conceptual or master land plan for the Properties, including, but not limited to, the Master Plan (other than within said Owner's Neighborhood); provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time). Notwithstanding anything to the contrary in this Article, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 30 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XVII

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 17.2, shall be resolved using the procedures set forth in Section 17.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

17.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 17.3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions);

(c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the laws of the State of Indiana in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association;

(d) any suit by the Association in which similar or identical claims are asserted against more than one Bound Party; and

(e) any suit by a Bound Party for declaratory or injunctive relief which seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 17.3 shall require the approval of the Association.

17.3. Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(ii) the basis of the Claim (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the Claim arises);

(iii) what Claimant wants Respondent to do or not do to resolve the Claim; and

(iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, the local Chapter of the Community Association Institute, or such other independent agency providing similar services upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii) This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Indiana. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Indiana.

17.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 17.3 (a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 17.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 17.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 17.4(c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

17.5. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 17.3 and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party; from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

Article XVIII GENERAL PROVISIONS

18.1. Term. This Declaration shall have perpetual duration.

18.2. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose, except that any amendment to Section 12.5 or any amendment inconsistent with Section 12.5, relating to the leasing or renting of single-family detached Units within the property described in Exhibit "A," must be approved by the Owners of at least 51% of the single-family detached Units within the property described in Exhibit "A."

After the termination of the Class "B" membership, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Units; (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any governmental agency. However, any unilateral amendment by Declarant shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibits "A" or "B" for development as part of the Properties after termination of the Class "B" membership, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Section 9.1. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

(c) Effective Date and Validity. To be effective, any amendment must be recorded in the Office of the Recorder of Porter County, Indiana.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

18.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

18.4. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

18.5. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor or vendor arising out of a contract for services or supplies between the Association and such contractor or vendor. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

18.6. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Neighborhood; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

18.7. Use of the Words "Sand Creek". No Person shall use the words "Sand Creek" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners and Builders may use the terms "Sand Creek" in printed or promotional matter where such term is used solely to specify that particular property is located within Sand Creek. The Association, any Neighborhood or Neighborhood Committee shall be entitled to use the words "Sand Creek" in its name.

18.8. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

18.9. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

18.10. Right of Repurchase. If improvements upon any Unit are not commenced within one year of initial closing and not completed within one year of such commencement, then Declarant at his option, and after 15 days prior written notice to the Owner, may repurchase the Unit for 90% of the price paid by Owner plus reimbursement for any real property taxes and assessments paid by Owner relating to the Unit. If Declarant fails to give written notice exercising its right to repurchase within 90 days after said completion period, the right of repurchase shall be deemed waived.

For purposes of this Section, commencement of improvements shall mean that the Owner of the Unit has (a) obtained approval for construction from the NCC; (b) obtained building permits from appropriate governmental authorities; and (c) is proceeding diligently toward the completion of the improvements. Completion of improvements shall mean that they are in a condition suited for immediate occupancy by the Owner or its occupants.

The provisions of this Section shall be specifically enforceable.

18.11. Exhibits. Exhibits "A," "B," "C" and "D" attached to the Amended and Restated Declaration are incorporated by this reference. Amendments to Exhibits "A," "B," and "D" shall be governed by this Article. Exhibit "C" may be amended in accordance with this Article or Article XII. Exhibit "E" attached to this Declaration is for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 24th day of NOVEMBER, 2000.

LAKE ERIE LAND COMPANY, an Indiana corporation

By: [Signature] [SEAL]

Its: PRESIDENT

Attest: [Signature] [SEAL]

Its: DIRECTOR OF BUSINESS OPERATIONS

[ACKNOWLEDGEMENT ON NEXT PAGE]

THE STATE OF INDIANA)
)
COUNTY OF PORTER)

REPRESENTATIVE ACKNOWLEDGMENT

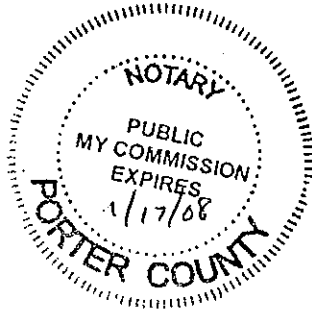
This instrument was acknowledged before me on the 29th day of NOVEMBER, 2000, by JERRY MOBLEY, the PRESIDENT of Lake Erie Land Company, an Indiana corporation, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of NOVEMBER, 2000.

Lori Lasowski
NOTARY PUBLIC IN AND FOR
THE STATE OF INDIANA
LORI LASOWSKI
[Print or Type Name of Notary]
My Commission Expires:
JAN - 17, 2008

This document prepared by:

T. Clifford Fleming
T. Clifford Fleming & Associates
99 East 86th Avenue, Suite E
Merrillville, Indiana 46410
(219) 769-0420



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CERTIFICATION OF ASSOCIATION

The undersigned officers of the Sand Creek Homeowners Association, Inc., an Indiana nonprofit corporation, hereby certify that the required consents of 67% of the Class "A" votes of the Association and the approval of 51% of the Eligible Holders of first Mortgages have been obtained in order to amend the Declaration and By-Laws to provide the direct vote of members in the Association instead of representative voting.

This 29th day of NOVEMBER, 2000.

SAND CREEK HOMEOWNERS ASSOCIATION, INC., an Indiana nonprofit corporation

By: [Signature] [SEAL]
JERRY MOBLEY, President

Attest: [Signature] [SEAL]
TOM GODFREY, Secretary

THE STATE OF INDIANA)
)
COUNTY OF PORTER)

REPRESENTATIVE ACKNOWLEDGMENT

This instrument was acknowledged before me on the 29th day of NOVEMBER, 2000, by JERRY MOBLEY, the President of Sand Creek Homeowners Association, Inc., an Indiana nonprofit corporation, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of NOVEMBER, 2000.

Lori Lasouski
NOTARY PUBLIC IN AND FOR
THE STATE OF INDIANA
LORI LASOUSKI
[Print or Type Name of Notary]
My Commission Expires:
JAN. 17, 2008

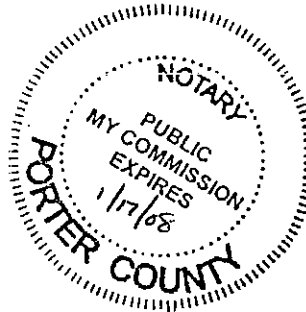


EXHIBIT "A"

Land Initially Submitted

Parcel 1

Planned Unit Development Phase 1, as per plat thereof, recorded in Plat File 18-E-1, in the Office of the Recorder of Porter County, Indiana.

Parcel 2

Planned Unit Development, Phase II, as per plat thereof, recorded in Plat File 18-E-1A, in the Office of the Recorder of Porter County, Indiana.

EXHIBIT "B"

Land Subject to Annexation

Parcel 1

A parcel of land lying partially in the Northwest Quarter and Southwest Quarter of Section 5 and the Northeast Quarter and the Southeast Quarter of Section 6 all in Township 36 North, Range 5 West of the Second Principal Meridian, Porter County, Indiana, bounded and described as follows: COMMENCING at the Southeast corner of said Southeast Quarter of Section 6; thence North 89 degrees 59 minutes 12 seconds West along the South line of said Southeast Quarter 2652.45 feet to the Southwest corner of said Southeast Quarter; thence North 01 degree 08 minutes 57 seconds West along the West line of said Southeast Quarter 2113.91 feet; thence North 89 degrees 59 minutes 02 seconds East 1325.90 feet to the West line of the East Half of said Southeast Quarter; thence North 01 degree 09 minutes 37 seconds West along said West line of the East Half 532.0 feet to the Northwest corner of said East Half of the Southeast Quarter; thence North 00 degrees 47 minutes 29 seconds West along the West line of the East Half of said Northeast Quarter of Section 6, 1981.77 feet to the centerline of Old Porter Road; thence along said centerline the following 10 courses and distances: South 76 degrees 52 minutes 45 seconds East 1205.76 feet to the point of curve of a curve to the right having a radius of 1996.79 feet, along said curve an arc length of 281.84 feet subtended by a chord of 281.61 feet bearing South 72 degrees 50 minutes 08 seconds East to the point of tangent of said curve, South 68 degrees 47 minutes 31 seconds East 492.30 feet to the point of curve of a curve to the left having a radius of 497.41 feet, along said curve an arc length of 284.47 feet subtended by a chord of 280.61 feet bearing South 85 degrees 10 minutes 34 seconds East to the point of tangent of said curve, North 78 degrees 26 minutes 24 seconds East 254.56 feet to the point of curve of a curve to the right having a radius of 2864.79 feet, along said curve an arc length of 312.92 feet subtended by a chord of 312.76 feet bearing North 81 degrees 34 minutes 09 seconds East to the point of tangent of said curve, North 84 degrees 41 minutes 54 seconds East 46.10 feet to the point of curve of a curve to the right having a radius of 654.81 feet, along said curve an arc length of 251.38 feet subtended by a chord of 249.84 feet bearing South 84 degrees 18 minutes 14 seconds East to the point of tangent of said curve, South 73 degrees 18 minutes 21 seconds East 14.08 feet to the point of curve of a curve to the left having a radius of 572.96 feet, along said curve an arc length of 164.41 feet subtended by a chord of 163.84 feet bearing South 81 degrees 31 minutes 35 seconds East to the point of tangent of said curve, South 89 degrees 44 minutes 48 seconds East 783.59 feet to the East line of said Northwest Quarter of Section 5; thence South 01 degree 01 minute 36 seconds East along said East line 1434.60 feet to the Southeast corner of said Northwest Quarter; thence South 1 degree 00 minutes 58 seconds East along the East line of said Southwest Quarter of Section 5, 2662.91 feet to the Southeast corner of said Southwest Quarter; thence North 88 degrees 26 minutes 05 seconds West along the South line of said Southwest Quarter 2662.41 feet to the POINT OF COMMENCEMENT;

EXCEPTING THEREFROM Sand Creek Country Club LTD Planned Unit Development Phase I as per the plat thereof recorded in Plat File 18-E-1 in the Office of the Recorder of Porter County, **ALSO EXCEPTING THEREFROM** Sand Creek Country Club LTD Planned Unit Development Phase II as per the plat thereof recorded in Plat File 18-E-1A in the Office of the Recorder of Porter County, **ALSO EXCEPTING THEREFROM** Mission Hills as per the plat thereof recorded in Plat File 20-E-5 in the Office of the Recorder of Porter County, **ALSO EXCEPTING** the following parcel: **COMMENCING** at the Southeast corner of Lot 66 in said Sand Creek Country Club LTD Planned Unit Development Phase II; thence North 00 degrees 00 minutes 48 seconds East along the East line of said Lot 66, 65.84 feet to the Northeast corner of said Lot 66; thence North 38 degrees 04 minutes 04 seconds East 95.10 feet along the Southeasterly line of Lot 67 in said Phase II; thence South 00 degrees 00 minutes 48 seconds West 140.72 feet; thence North 89 degrees 59 minutes 12 seconds West 58.62 feet to the **POINT OF BEGINNING**, also including the following parcel in said Phase II that part of Lot 67 described as beginning at the most Easterly corner thereof; thence North 47 degrees 53 minutes 42 seconds West along the Northeasterly line of said Lot 67, a distance of 30 feet; thence South 00 degrees 29 minutes 52 seconds East, 33.43 feet; thence South 44 degrees 34 minutes 22 second East, 9.16 feet, more or less to the Southeasterly line of said Lot 67; thence North 38 degrees 04 minutes 04 seconds East, 25.2 feet, more or less, to the **POINT OF BEGINNING**.

Parcel 2

That part of the Northeast Quarter of Section 7, Township 36 North, Range 5 West of the Second Principal Meridian, Porter County, Indiana, lying North of the Right-of-Way of the former Wabash Railroad (Norfolk & Southern Railroad).

SAND CREEK LEGAL DESCRIPTION

A tract of land lying in Sections 5, 6, 7, and 8 all in Township 36 North, Range 5 West of the Second Principal Meridian, Porter County, Indiana, described as follows: Beginning at the Southwest corner of the Southeast Quarter of said Section 6; thence North along the West line of said Southeast Quarter to the North line of Sand Creek Country Club, Ltd. Planned Unit Development Phase 1, as per plat thereof, recorded in Plat File 18-E-1 in the Office of the Recorder of Porter County, Indiana; thence East along said North line and the Easterly prolongation of said North line to the West line of the East Half of said Southeast Quarter; thence North along said West line to the Northwest corner of said East Half of the Southeast Quarter; thence North along the West line of the East Half of the Northeast Quarter of said Section 6 to the centerline of Porter Avenue; thence Southeasterly and Easterly along said centerline of Porter Avenue to the East line of the West Half of said Section 5; thence South along said East line to the Northeast corner of the Northwest Quarter of said Section 8; thence South along the East line of said Northwest Quarter to the North right-of-way line of the Norfolk and Western Railroad (abandoned) formerly known as the Wabash Railroad; thence West along said North right-of-way line to the West line of the Northeast Quarter of said Section 7; thence North along said West line to the South line of lands described in Quit Claim Deed No. 97-16204, recorded on 7/15/1997 in Deed Record 480, page 303 in the Office of the Recorder of Porter County, Indiana; thence East along said South line of Deed No. 97-16204 to the East line of said Deed No. 97-16204; thence Northerly along said East line to the intersection with said West line of the Northeast Quarter of Section 7; thence North along said West line to the Point of Beginning and subject to all easements and rights-of-way of record.

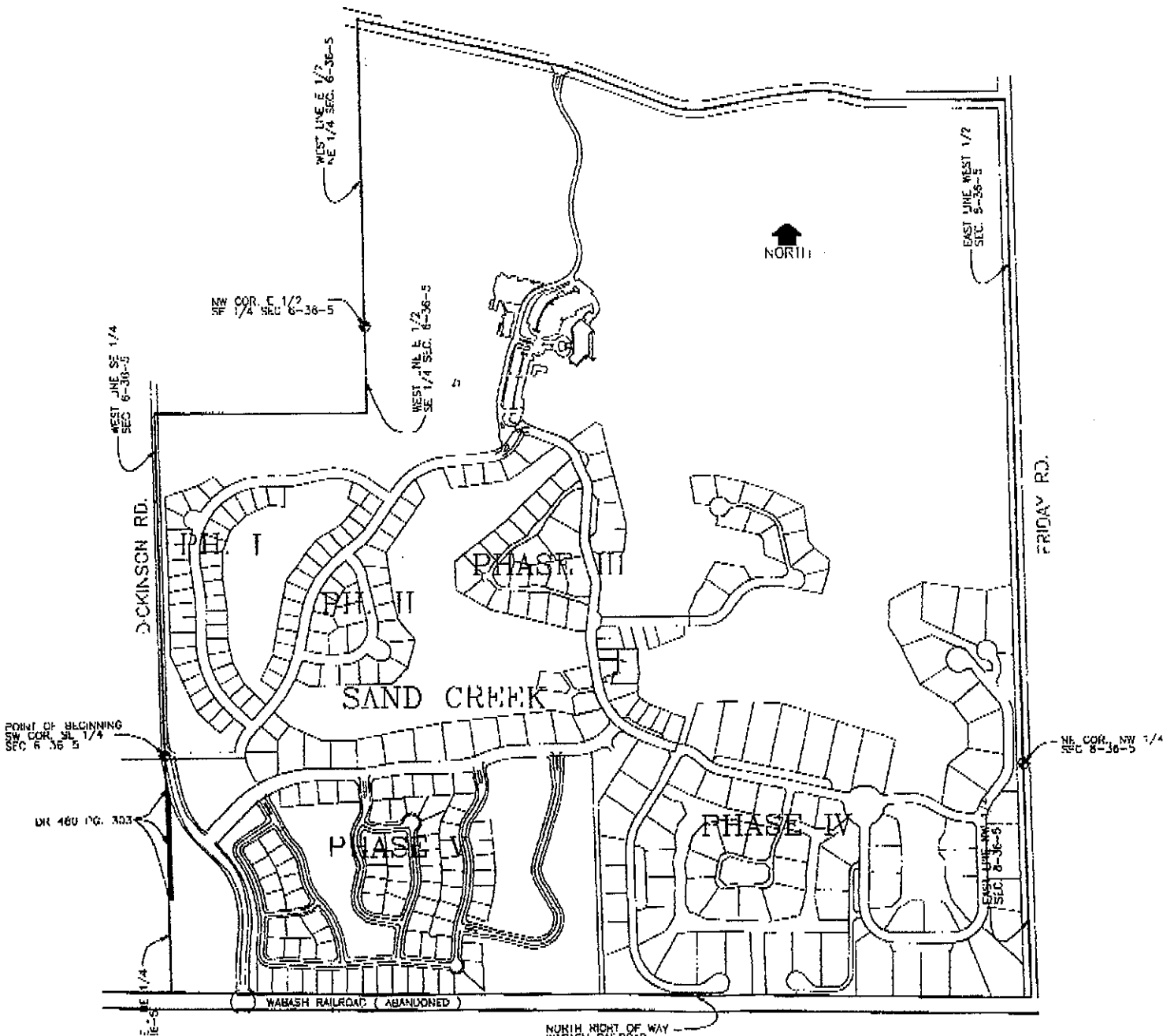


EXHIBIT "C"

Initial Use Restrictions

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article XII of the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(b) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(c) Any activity which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation;

(d) Pursuit of hobbies or other activities, including the repair or maintenance of vehicles, which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(e) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(f) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(h) Use and discharge of firecrackers and other fireworks;

(i) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(k) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(l) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Office of the Recorder of Porter County, Indiana, except that the Declarant shall be permitted to subdivide or replat Units which it owns;

(m) Swimming, boating, use of personal flotation devices, fishing, or other active use of lakes, ponds, streams or other bodies of water within the Properties. The Declarant, its successors and assigns shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and to draw water from lakes, ponds and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Properties;

(n) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it, or its assigns, owns;

(o) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved by the NCC; and

(q) Any garage, moving or rummage sale or similar activity without the prior approval of and in the sole discretion of the Board. Any business

or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources;

(d) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(e) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(f) The use of any carport or garage in any manner which prevents it from being used to store or park the number of vehicles for which it was originally designed or the conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee pursuant to Article XI;

(g) The parking of any vehicle on any driveway except on a temporary basis by visitors or household guests.

(h) Leaving any garage door open when not in use;

(i) Operation of motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes; and

(j) The parking of any golf cart on any portion of the Properties other than the enclosed areas screened from view of adjacent property or Common Areas, if any, specifically designated for temporary parking of vehicles while using Common Area facilities.

(k) Any construction, erection, or placement of a thing, permanently or temporarily, on the outside portions of the Unit whether such portion is improved or unimproved, unless approved by the New Construction Committee or Modifications Committee as set forth in Article XI of the Declaration. This shall include, without limitation, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; electric bug killers; woodpiles; above-ground swimming pools; docks, piers and similar structures; antennas, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind; and signs of any kind, including "for sale" or "rent" signs.

4. Leasing of Units. "Leasing," for purposes of this Paragraph 4, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations.

EXHIBIT "D"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").

2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Indiana chapter of The Community Associations Institute, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no posthearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

SAND CREEK LEGAL DESCRIPTION

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