

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
COPPER CREEK  
PLANNED UNIT DEVELOPMENT

A Subdivision of Part of the Northeast Quarter of the Northeast Quarter and part of the Northwest Quarter of the Northeast Quarter of Section 34, Township 6 South, Range 9 West in Ohio Township, Warrick County, Indiana, more particularly described as follows:

Beginning at a stone at the Southwest corner of the Northeast Quarter, Northeast Quarter of said Section 34; thence a long the West line of said Quarter, Quarter Section also being the East line of the Northwest Quarter of the Northwest Quarter

- 1<sup>st</sup>: North 00 Degrees 27 Minutes 50 Seconds East 264.95 feet to a 5/8" iron rod with LS cap #S0006; thence
- 2<sup>nd</sup>: North 68 Degrees 38 Minutes 26 Seconds West 241.21 feet to a cotton gin spike in the centerline of State Road 261; thence along said centerline
- 3<sup>rd</sup>: Around a curve concave towards the West, with a central angle of 00 Degrees 32 Minutes 04 Seconds, a radius of 11,362.39 feet, an arc distance of 106.01 feet, a chord bearing of North 30 degrees 38 Minutes 42 Seconds East and a chord distance of a distance of 106.01 feet; thence
- 4<sup>th</sup>: South 59 Degrees 37 Minutes 20 Seconds East 30.00 feet to a 5/8" iron rod with LS cap #S0006; thence
- 5<sup>th</sup>: Around a curve concave towards the Northeast, through a central angle of 99 Degrees 01 Minutes 06 Seconds, a radius of 25.00 feet, an arc distance of 43.20 feet, a chord bearing of South 19 Degrees 07 Minutes 53 Seconds East, a distance of 38.03 feet to a 5/8" iron rod with LS cap #S0006; thence
- 6<sup>th</sup>: South 68 Degrees 38 Minutes 26 Seconds East 77.34 feet to a 5/8" iron rod with LS cap #S0006; thence
- 7<sup>th</sup>: South 59 Degrees 03 Minutes 55 Seconds East 35.15 feet to a 5/8" iron rod with LS cap #S0006; thence
- 8<sup>th</sup>: Around a curve concave towards the North, through a central angle of 25 Degrees 23 Minutes 40 Seconds, a radius of 75.00 feet, an arc distance of 33.24 feet, a chord bearing of South 71 Degrees 45 Minutes 45 Seconds East, a distance of 32.97 feet to a 5/8" iron rod with LS cap #S0006; thence
- 9<sup>th</sup>: South 84 Degrees 27 Minutes 36 Seconds East 197.50 feet to a 5/8" iron rod with LS cap #S0006; thence
- 10<sup>th</sup>: Around a curve concave towards the Northwest, through a central angle of 58 Degrees 19 Minutes 16 Seconds, a radius of 15.00 feet, an arc distance of 15.27 feet, a chord bearing of North 66 Degrees 22 Minutes 47 Seconds East, a distance of 14.62 feet to a 5/8" iron rod with LS cap #S0006; thence
- 11<sup>th</sup>: North 37 Degrees 13 Minutes of 09 Seconds East 53.63 feet to a 5/8" iron rod with LS cap #S0006; thence
- 12<sup>th</sup>: North 52 Degrees 46 Minutes 51 Seconds West 87.48 feet to a 5/8" iron rod with LS cap #S0006; thence
- 13<sup>th</sup>: Around a curve concave towards the East, through a central angle of 101 Degrees 06 Minutes 24 Seconds, a radius of 40.00 feet, an arc distance of 70.59 feet, a chord bearing of North 02 Degrees 13 Minutes 40 Seconds West, a distance of 61.78 feet to a 5/8" iron rod with LS cap #S0006; thence
- 14<sup>th</sup>: North 48 Degrees 19 Minutes 32 Seconds East a distance of 210.90 feet to a 5/8" iron rod with LS cap #S0006; thence
- 15<sup>th</sup>: North 89 Degrees 13 Minutes 36 Seconds East a distance of 54.30 feet to a point on the South Right-of-Way of Robin Hill Road: thence along said Right-of-Way for the following two courses
- 16<sup>th</sup>: Around a curve concave towards the North, through a central angle of 25 Degrees 46 Minutes 37 Seconds, a radius of 251.06 feet an arc distance of 112.95 feet, a chord baring of South 77 Degrees 53 Minutes 06 Seconds East, a distance of 112.00 feet to a point; thence
- 17<sup>th</sup>: North 89 Degrees 13 Minutes 36 Seconds East 200.99 feet to a 5/8" iron rod with LS cap #S0006; thence

- 18<sup>th</sup>: South 00 Degrees 44 Minutes 36 Seconds West 315.90 feet to a 5/8” iron rod with LS cap #S0006; thence
- 19<sup>th</sup>: North 89 Degrees 34 Minutes 02 Seconds West 16.19 feet to a 5/8” iron rod with LS cap #S0006; thence
- 20<sup>th</sup>: South 00 Degrees 25 Minutes 58 Seconds West 170.00 feet to point in the north line of South Broadview Subdivision section “C” as per plat recorded in Plat File1, Card 198 in the Office of the Recorder of Warrick County, Indiana; thence along said North line
- 21<sup>st</sup>: North 89 Degrees 34 Minutes 02 Seconds West 160.72 feet to a 5/8” iron rod with LS cap #S0006 at the Northwest Corner of said subdivision; thence along the west line of said subdivision
- 22<sup>nd</sup>: South 00 Degrees 44 Minutes 36 Seconds West 120.00 feet to a 5/8” iron rod with LS cap #S0006 at the Southwest corner of said subdivision, also being the South line of said Northeast Quarter, Northeast Quarter; thence along the South line of said Quarter, Quarter Section
- 23<sup>rd</sup>: North 89 Degrees 34 Minutes 02 Seconds West 512.20 feet to the Point of Beginning and containing 352017.9233 square feet or 8.0812 acres more or less.

Subject to the Right-of-Way for State Road 261, 30 feet in width and lying Easterly of and coincident with the 3<sup>rd</sup> course of the above described parcel.

#### ARTICLE I – DEFINITIONS

THE UNDERSIGNED, BARRINGTON DEVELOPMENT GROUP, INC., hereinafter referred to as “Declarant,” and or “Developer” being the owners and subdividers of that certain subdivision, a part of the Northeast Quarter of the Northeast Quarter and part of the Northwest Quarter of the Northeast Quarter of Section 34, Township 6 South, Range 9 West in Ohio Township, Warrick County, Indiana.

Section 1. “Association” shall mean and refer to the Copper Creek “C” Homeowner’s Association, its successors and assigns, and “Board of Directors” or “Directors” shall refer to the Board of Directors of the Association.

Section 2. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee or undivided fee interest in any Lot, as defined herein, which is part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” shall mean and refer to that certain real property more fully shown on plat and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. “Residence or Unit” shall mean and refer to the residential dwelling unit constructed upon any of the Lots shown on the Plat, title to which is or will be conveyed in fee simple by reference to the numbered plat of land shown upon any recorded subdivision map of the properties.

Section 5. “Common Area” shall mean all property that may be owned by the association and used for the common use and enjoyment of the Owners.

Section 6. “Yard” shall mean and refer to any portion of a Lot which is not occupied by an individual residence or is not part of the common area. The “Fenced Yard” shall mean and refer to the portion of the yard enclosed by a fence provided by Declarant as part of the original construction. The “Front Yard” shall mean and refer to that portion of the Yard that is outside of the Fenced Yard.

Section 7. “Declarant” also referred to as “Developer” shall mean and refer to Barrington Development Group, Inc., its successors and assigns if such successors and assigns should require more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. “Lot” shall mean the individual parcel of land upon which each individual

residence is constructed and referred to by the number on the Copper Creek "C" Subdivision plat.

Section 9. "Mortgage" shall mean any mortgage, deeds of trust, contract of sale or other document pledging a Lot as security for the payment of a debt or obligation.

Section 10. "Mortgagee" shall mean any person, corporation, partnership, trust, company or other legal entity which takes holds or is secured by a mortgage.

Section 11. "Member" shall mean and refer to every person or entity that holds membership in the Association.

## ARTICLE II – MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment, including contract purchasers, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. When more than one person holds a membership interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote is cast with respect to any Lot.

Section 2. Voting Rights. There shall be two (2) classes of voting membership:

- A. Class A members will be all those Members other than the Declarant. Class A members will be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any Lot.
- B. Class B Members shall be Declarant, or its successors or assigns, and shall be entitled to twenty votes for each Lot owned, provided that the Unit on the Lot owned by Declarant is neither leased, rented nor otherwise occupied as a residence. Leasing, renting or allowing entry for residential occupancy shall terminate the Declarant's weighted voting advantage in relation to any Lot on which a Unit is leased, rented or occupied as a residence, and will limit Declarant in relation to any such Lots to the same voting rights as a Class A Member. The Class B membership shall cease and be converted to Class A membership on the occurrence of any of the following events, whichever happens earliest:
  - (i) one hundred twenty (120) days after that date on which the total vote outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
  - (ii) one hundred twenty (120) days after seventy-five (75%) of the Lots in the Properties have been conveyed to Lot purchasers; or
  - (iii) December 31, 2015; or
  - (iv) when voluntarily terminated by Declarant by a writing delivered to the Secretary of the Association.

## Article III – ADMINISTRATION AND MANAGEMENT

Section 1. The administration of the Properties shall be governed by these Covenants, the Articles of Incorporation, Bylaws and published rules and regulations of the Association.

Section 2. Architectural Committee. All construction and related activity in the Subdivision shall be subject to the prior approval of the Developer/Architectural Committee, hereafter referred to as the "Committee".

No building structure or appurtenance, including, but not limited to, any residence, garage, porch, breezeway, fence, wall, patio, antenna, solar collector, shall be commenced, constructed, or erected, placed or altered on any lot in the Subdivision until complete construction plans and specifications for all such construction or alterations, which plans and specifications shall include, but shall not be limited to, an accurate architectural drawing on the exterior design of each of the proposed building or structure and a plot plan showing the proposed location of each building or structure, are submitted to the Developer for approval.

The Developer shall have the right to refuse to approve any such plans and specifications which are not suitable or desirable, in its sole judgment and desecration, for aesthetic or other reasons, and in making such determination the Developer may consider, among other things, the harmony of the proposed exterior design with the intended architectural character of the Subdivision and the existing structures within the Subdivision; the location of each of the structures upon the lots; the elevation of the structure; the exterior materials to be used in construction; the general quality of construction and design; the approximate cost of the structure and improvements; and compliance with all applicable covenants and restrictions.

In the event the Developer or its designated representative shall fail to approve or disapprove any such plans and specifications within forty-five (45) days after said plans and specifications have been submitted to the Developer and a written receipt therefore executed by the Developer or its representative, such covenants shall be deemed to have been fully complied with and said plans and specifications approved. In such event such plans and specifications are disapproved in whole or in part by the Developer, the Developer shall notify the submitted party in writing as to the reason for such disapproval, and such plans and specifications, after modification shall be resubmitted to the Developer for review. The Developer shall approve or disapprove such modifications within thirty (30) days, and in the event of the failure of the Developer so to act within said thirty (30) days period, said plans and specifications shall be deemed to have been approved as modified.

The Developer shall have the right to make on-site inspections of any and all structures during the construction period. If any alterations to the approved plan have been made the Developer has the option to halt such construction until the same is brought into compliance with the approved plan.

In the event of the death of the undersigned Developer or in the event of their resignation in writing prior to the expiration of the period of existence of the Architectural Committee hereafter specified, the Committee shall be composed of three (3) members who are lot owners in the Subdivision and who are elected from time to time by a majority vote of the members of the Homeowner's Association. The Committee so elected may act by majority vote of its members of the Committee and authorized by said Committee to exercise some or all of the powers of the Committee herein set forth.

The powers and duties of the Committee and or its designated successors or representatives shall cease twenty-five (25) years following the date of the recording of these restrictions and covenants, unless prior to said date a written instrument shall be executed by the then record owners of a majority of the lots in the Subdivision and duly recorded, extending the period of the existence of the Committee and appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by said Committee.

Section 3. The Association shall manage, supervise, maintain, repair and pay all taxes and assessments on the Common Area, and shall provide maintenance to individual lots as described hereinbelow:

A. Common Area. The Association shall provide exterior maintenance upon the Common Area as follows: (1) maintenance, repair and replacement of common area fencing, common area utility systems and any other common area; (2) landscape care within the common area, and (3) street lighting maintenance.

B. Individual Lots. The Association shall offer exterior maintenance upon each Lot and Residence which is subject to assessment hereunder, as follows: landscape care for the portion of the Lot outside the fenced yard (landscape care means maintenance of grass.) All other maintenance, repair or replacement required upon an individual Lot and/or Residence shall be the responsibility of the Owner. In the event the Owner replaces the roof, the same roofing materials and colors, or equivalent, utilized in the original construction shall be used. Samples of said roofing materials must be submitted to the Board of Directors or its designated representative prior to any re-roofing construction.

Section 4. Association's Right to Provide Additional Maintenance. Notwithstanding the provisions of this Article, the Board of Directors of the Association may, at any time and from time to time, determine that the Association shall provide additional common area maintenance and/or other improvements located on each Lot which is subject to assessment hereunder. In the event that the Association elects to provide such additional maintenance, the costs thereof shall be common expense of the Association as provided in Article V hereof, and the amount of the actual assessments levied by the Association pursuant to Article V shall be adjusted accordingly, with regard to the anticipated costs of providing such maintenance and any reserve therefor. Any such additional maintenance services provided in accordance with this Section may also be revoked, at any time and from time to time, by the Board of Directors of the Association.

Section 5. Association's Right to Repair, Maintain, and Restore. The Owner of each Lot grants to the Association, its agents, employees and independent contractors, an easement over and across his or her Lot for the purpose of performing such maintenance and repair work. In the event any Owner shall fail to perform his maintenance or repair obligations as provided herein in a manner satisfactory to the Board of Directors of the Association, the Association shall, if said notice of said failure continues for a thirty (30) day period after written notice to said Owner by the Board, enter upon said Lot within a reasonable time period to repair, maintain and restore the Lot, the exterior of the structure and any other improvements erected thereon. The cost of such maintenance, repair or restoration shall be the personal obligation of the Owner of the Lot on which such work is performed, shall be added to and become part of the assessment of which such Lot is subject, and shall become a lien against such Lot as provided in Article V hereof.

Section 6. Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance or repair of the Common Area, a Lot or any improvement located thereon, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family, or by a guest, or invitee of such Owner, or any tenant or tenant's family, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article V of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, or tenant or tenant's family, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 7. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.

#### ARTICLE IV – PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Declaration of Common Area. Declarant hereby dedicates the Common Area to the common use and enjoyment of the Members, as provided herein, but not for the use by the general public.

Section 2. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to promulgate and publish rules and regulations which each Owner shall strictly comply with.

B. The right of the Association, as provided in its Articles and Bylaws to suspend the voting rights and rights to use the Common Area by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless by instrument signed by two-thirds of each class of membership hereunder has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Owner at least thirty (30) days in advance of any action taken; and provided further that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this clause.

D. The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

#### ARTICLE V – COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments and Special Assessments. Declarant for each Lot owned within the Properties shall be deemed to covenant and agree, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association annual common expense assessments, insurance assessments and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided. Said assessments, interest and costs of collection, including reasonable attorney's fees, shall be a charge against which each such assessment is made. Such assessments, reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for any delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Property; for the maintenance, repair and upkeep of the common area and for the landscape care and any other maintenance obligation which may be deemed necessary by the Association for the common benefit of the Owners, or the maintenance of property values, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of the City, County or other government authorities. The assessment shall further be used to provide adequate insurance of all types, and in such amounts deemed necessary by the Board of Directors with respect to private and public ways. Also, a portion of the assessments shall be used to provide an adequate reserve fund for the replacement, repair and maintenance of those elements of the property which must be replaced on a periodic basis, and the Board of Directors shall be obligated to establish such reserve fund.

Section 3. Annual Assessment. The total annual assessment against all owners shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year, which estimates may include,

among other things: (a) expense of management; (b) taxes assessed on common areas; (c) premiums for all insurance which the Association is required or permitted to maintain as provided in Article VI hereof; (d) repairs and maintenance including landscape maintenance; (f) legal and accounting fees; (g) any deficit remaining from a previous assessment year; (h) the creation of reasonable contingency reserves, working capital and/or sinking funds and any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Annual assessments may be collected in monthly, quarterly or annual installments, or in any other manner as determined by the Board of Directors. Annual assessments may be revised at any time by the Board of Directors.

Section 4. Special Assessments. In addition to the assessments authorized above, the Association may at any time, from time to time, determine, levy and assess, a special assessment for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Common elements, specifically including, without limitation, any fixtures and personal property related thereto; provided however, no special assessments shall be used for such purposes so long as Declarant has an obligation to pay a subsidy to the Association to meet any such shortfall. Any such special assessment made by the Board or Directors must be approved by sixty-seven (67%) percent of the members who are voting in person or by proxy at a meeting duly called for that purpose. No special assessment for legal action pursued by the Association shall be required of the Declarant without written approval by the Declarant.

Section 5. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all members not less than five (5) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies, if permitted, entitled to cast sixty (60%) percent of all the votes of the membership shall constitute a quorum. If the required quorum is not present, the meeting shall be continued to another date to be decided by the voting members at the first meeting, and it will be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be twenty-five (25%) percent of all votes of the membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual common expense and special assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association. In income from whatever source (except reserves), due to the Association fail to equal or exceed the actual expenses incurred by the Association during any annual common expense assessment period because of such partial Declarant assessment, then Declarant shall, upon written notice from the Association, pay a sufficient amount, as a subsidy and not as an assessment, but not exceeding that amount which the Declarant would have had to pay as assessments but for the aforesaid reduced assessment rate, to the Association to meet any such shortfall so long as (a) such notice must be given within one (1) year after the end of each annual common expense assessment period and is waived if not made in such timely manner (such final one (1) year after the end of each annual common expense assessment period and is waived if not mad in such timely manner (such final one (1) year period to terminate one (1) year after the date the Class B membership is converted to Class A membership, as set forth in Article I hereof) and (b) Declarant shall have no obligation for any such shortfall caused by any decrease in assessments, including without limitation, the levying of any common expense assessment in an amount less than the maximum for that annual common expense assessment period, or by expenditures for capital improvements, unless the same has been previously approved in writing by Declarant; provided, however, that in the event there is more than one Declarant, as defined in this Declarant, each such subsidy, as hereinabove provided, such proportional share to be based on the amount of the Property owned by each Declarant compared to the total amount of the Property owned by all Declarants.

The amount, if any, shall be determined by the results of a financial review performed at the direction of the Association. Said financial review shall reflect the financial condition of the Association as of December 31<sup>st</sup> of each year. (Provided, however, that if the first fiscal year of operation of the Associations less than six (6) months, the first such financial review shall not be required until after the December 31<sup>st</sup> following at least one year's operation.) The operating surplus or deficit shall be determined

after providing for replacement reserves (that portion of the monthly assessments allocated for replacements, less any funds expenses for such replacements) and the working capital account. The Declarant shall pay over to the Association any such funds required within sixty (60) days of receiving the financial review.

Section 7. Date of Commencement of Annual Assessment. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first Lot by the Declarant. The first assessment shall be prorated according to the number of days remaining in the assessment period established by the Board of Directors. The Board of Directors shall fix the amount of the assessment against each Lot at least thirty (30) days in advance of the assessment period. Written notice of the assessment may be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable fee, furnish a certificate signed by an officer or a designated representative of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. The omission or failure to fix an assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or release of an Owner from his obligation to pay the same.

Section 8. Effect of Non-Payment of Assessments. The assessments, charges and fees, as well as any other monthly or other installments thereof, provided for in this Declaration (together with any and all interest, costs, late charges, expenses and reasonable attorney's fees which may arise under the provisions of this Declaration), shall be burdens running with, and perpetual liens in favor of the Association, upon the specific Residence to which such assessments apply. To evidence such lien upon a Residence, the Association may prepare a written lien notice setting forth a description of the Residence, the amount of assessments thereon which are unpaid as of the date of such lien notice, the name of the Owner or Owners thereof and any and all other information that the Association may deem proper. The lien notice shall be signed by a Member of the Board of Directors of the Association, by an Officer of the Association or by an agent as authorized by the Board of Directors and shall be recorded in the Warrick County Clerk's Office, State of Indiana. The recording of any written lien notice shall not constitute a condition precedent nor delay the attachment of the lien, but such lien is a perpetual lien upon each Residence and attached without notice at the beginning of the first day of any period for which any assessment is levied or assessed. Any assessment charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate of eighteen (18%) percent per annum from the due date, and the Association may assess a monthly charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Residence. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosure, or in any way waiving, the Association's lien thereof. In the event that any such assessment, charge or fee, or monthly or other installment thereof, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or crossclaim for such relief in any action) against any Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Residence, then all unpaid assessments, charges and fees, and all unpaid monthly or other installments thereof, any and all late charges and accrued interest under this Section, the Association's costs, expenses and reasonable attorney's fees incurred for preparing and recording any lien notice, and the Association's cost of suit, expenses and reasonable attorney's fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Residence. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Residence at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.



Section 9. Subordination of the Lien to Mortgages. Except as provided below, the lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a first mortgage of record. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall only extinguish the lien of assessment charges which become due more than six (6) months prior to a first mortgagee's acquisition of title as a result of any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract shall relieve any Lot from liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 10. Records of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available on request for examination by the Owners and others with an interest in such as encumbrances or prospective lenders.

Section 11. Notice of Mortgage. Upon request of a First Mortgagee of any Lot, and upon payment of reasonable compensation therefor, the Association shall report to such First Mortgagee any unpaid assessment or other defaults under the terms of this Declaration which are not cured by said mortgagee's mortgagor within thirty (30) days.

Section 12. Certificates of Status of Assessments. Within ten (10) days of receipt of a written request from any Owner, any First Mortgagee of a Residence or any other person, and upon payment of a reasonable fee, but in no event less than Ten (\$10.00) DOLLARS, the Association, through its Board of Directors or by its managing agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees or portions thereof, if any, with respect to the subject Residence, the amount of the current annual common expense assessment and the date that such assessment become due, the due date of any special assessment then existing against the Residence, the amount of any credit for any advanced payments of assessments and for prepaid items (such as insurance premiums), and other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

Section 13. Exempt Property. The following property subject to the Declaration shall be exempted from the Assessments, charges and liens created herein:

- A. All properties to the extent of any easement or other interest therein dedicated and accepted by a municipal or quasi-municipal corporation or other local public utilities or authority and devoted to public use.
- B. All Common Areas.

#### ARTICLE VI – INSURANCE

Section 1. Insurance Requirements. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided.

To the extent possible, the casualty, property and liability insurance shall:

- A. Provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents and members;
- B. Contain a "severability of interest" clause that the insurance cannot be canceled, invalidated and suspended on account of the negligent or intentional acts of the Association, its officers, directors, employees and agents; and

- C. Provide that the policy of insurance shall not be terminated, canceled or substantially modified without at least thirty (30) days prior written notice to the Association.

Any insurance policy may contain deductible provisions. Any loss falling within the deductible portion of a policy shall be borne by the Association's reserves and be so designated. The cost and expense of all insurance obtained by the Association shall be paid for out of Association funds collected by insurance assessments, as provided in this declaration.

Section 2. Insurance by Owners. Insurance coverage on the premises owned by them and furnishings or other property belonging to an Owner, and public liability coverage, shall be the sole and direct responsibility of the Owner(s) thereof, and the Association, its Board of Directors and/or the managing agent of the Association shall have no responsibility therefor. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.

Section 3. Fidelity Insurance. The Association may also maintain adequate fidelity coverage, if available, to protect against dishonest acts on the part of directors, officers, trustees and employees and managing agents of the Association and all others who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall (i) name the Association as an obligee; (ii) be written in an amount equal to at least one and one-half times the estimated annual operating expenses of the Association, including reserves; (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expressions; and (iv) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least fifteen (15) days written notice to the First Mortgagees and the Association.

Section 4. Other Insurance. The Association may obtain such additional insurance coverage against such additional risks, as it shall determine to be appropriate.

#### ARTICLE VII – IDEMNIFICATION AND AUDIT

Section 1. Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and are hereby indemnified by the Owners and the Association against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in any proceeding to which of his being or having been an officer or director of the Association, or any settlements thereof, whether or not he is an officer or director of the Association at the time such expenses are incurred, except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interest of the Association.

Section 2. Audit. The Association shall provide a financial statement for the immediate preceding fiscal year, free of charge to any Owner, First Mortgagee of a Unit, or any insurer or guarantor of such First Mortgage, within a reasonable time if written request therefor is given within thirty (30) days after the end of any fiscal year for the Association by any such Owner, First Mortgagee, or any insurer or guarantor of such a First Mortgage. The Association shall deliver free of charge on request to each Owner and any First Mortgagee, insurer or guarantor of a first mortgage an unaudited financial statement for the Association for the preceding fiscal year.

#### ARTICLE VIII – PARTY FENCES

Section 1. General Rules of Law to Apply. Except for the fences, which shall be considered part of the common area, each fence which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party fence, and, to the extent not inconsistent with the provisions of this Articles, the general rules of laws regarding party fences and liability for property damage due to negligence or willful acts or omissions shall apply

thereto. A party fence may not be constructed in such a manner as to not allow the abutting lot owner's access to the easement area, or sideyard of the lot. In the event of damage or destruction, the fence will be restored to its original state within a reasonable time after such damage occurs.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party fence shall be shared by the Owners who make use of the fence in proportion to such use. The repair and maintenance of the common area fences shall be the obligation of the Association.

Section 3. Destruction. If a party fence is destroyed or damaged, either Owner may restore it, and the other Owners shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Damage to Property. Notwithstanding any other provisions of the Article, any Owner, who by his negligent or willful act causes any party fence or adjacent property to be exposed to damage, shall bear the whole cost of furnishing the necessary repairs as a result of such damage.

Section 5. Right to Contribution Runs with Land. The right of any owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors' in title.

Section 6. Arbitration. In the event of a dispute arising concerning a party fence, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators. The decision and judgment of the arbitrators shall be enforceable according to the Indiana rules of civil procedure pertaining to arbitration.

#### ARTICLE IX – EASEMENTS

Section 1. Easements for Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachment of Residences onto adjoining Lots or the Common Area or encroachment of the Common Area onto any Lot; or encroachment of any driveway or portion thereof, fence or any other similar encroachment designated or constructed by Declarant; overhangs, as designated or constructed, by the Declarant; and for any encroachment occurring thereafter as a result of settling or shifting of any structure. A valid easement shall exist for said encroachments and overhangs and for their maintenance, repair and replacement. If any structure is partially or totally destroyed and then rebuilt, the Owners of Lots agree that minor encroachments shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances.

Section 2. Maintenance of Easement. An easement is hereby granted each Owner and each member of the Board of Directors, or their representatives, to enter any Lot for the purpose of performing installations, alterations or repairs to the party fence, mechanical, electrical or utility services which, if not performed, would affect the use of other residence(s) provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of an emergency, such right of entry shall be immediate.

Section 3. Easements. Public utility easements are reserved in the Subdivision for the erection, construction, maintenance and use of sewer, drain, gas, water, heat, cable TV, telephone, electrical and any other similar or like utilities, and certain easements designated for surface water drainage. Such easements are located upon the lots at the location and are of the widths as more particularly shown on the recorded plat of the Subdivision and marked as "Public Utility Easement" or "Public Utility and Drainage Easement." No building, structure, planting or other obstruction shall be placed on or within or be permitted to remain on or within any such easement, which may damage or interfere with the installation and maintenance of utility facilities or which may change the direction of or obstruct or retard the flow of

surface water through the drainage channels in the easements. Each such easement area shall be kept clean and maintained continuously by the owner of each Lot upon which any such easement is located.

#### ARTICLE X – DECLARANT’S EXCEPTIONS, EXCLUSIONS AND RESERVATIONS

So long as Declarant owns a Lot in the Properties, Declarant, its successors and assigns excepts, excludes and reserves the following from each and every deed and instrument of conveyance executed and delivered by it to a Lot Owner:

a. The right to maintain a sales office, construction office and model homes on the Properties and to conduct sales activities therein.

b. The right to construct and complete the construction of units, garages, buildings, drives, lanes and roads and all other improvements on the Properties, and to repair and maintain the Common Area. In connection therewith, Declarant reserves (a) the right to use and excavate the surface and subsurface of the ground for the erection, construction and installation of said improvements and foundations, footings, floorings and basements. Declarant reserves the right to extend the drives, lanes and roads located or to be located on the Properties; (b) the right to lease and rent such Units and the right to sell, grant and convey title to purchasers of such subsequently constructed Units; (c) the right to use and occupy so much of the Properties as may be necessary for the construction, reconstruction, maintenance and operation. Prior to December 31, 2012, Declarant reserves the right to convey to any municipality, water district, sanitary sewer district or other municipal or quasi-municipal corporation all sewer lines and mains, and water mains and pipelines constructed or to be constructed on the property, together with suitable rights-of-way over said lands for the required maintenance, repair replacement and operation thereof.

#### ARTICLE XI – USE RESTRICTIONS

Section 1. No use shall be made of the Owner’s Lot which will in any manner violate the statutes, rules, ordinances or regulations of any governmental authority having jurisdiction over the use of said Owner’s Lot.

Section 2. No Temporary Structures. No temporary structure such as a trailer, mobile home, garage, tent, shack, barn or other building shall be built, erected or placed upon any Lot for use as a residence, either temporarily or permanently. The initial structure to be constructed upon any Building Site shall be the principal residence and shall not be occupied or inhabited until such residential structure shall have been substantially completed in accordance with the plans and specifications as approved by the Declarant.

Section 3. No cats, dogs or other animal, or bird or reptile, hereinafter for brevity termed “animal” shall be kept, maintained or harbored in the development unless the same in each instance is expressly permitted in writing by the Declarant, or by the Board of Directors of the Association. Where such written permission is granted, such permission is revocable if the animal becomes obnoxious to other Owners, in which event the Owner or person having control of the animal shall be given a written notice to correct the problem, or if not corrected, the Owner upon written notice will be required to dispose of the animal. The written notices provided for herein shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association.

Section 4. No advertising sign (except one of not more than six (6) square feet “Home For Sale” sign per parcel), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the property. Provided, further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of existing buildings, if any, of the Declarant, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 5. For all occupied units (not those under construction), all equipment, garbage cans, wood piles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of the neighboring Lots and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

Section 6. Nuisances. No noxious or offensive activities shall be carried on upon any Lot in the Subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the residents of the Subdivision. No Lot shall be used for the storage of any property or thing that will cause the Lot to appear unclean or untidy, nor shall any substance, thing or material be kept upon any Lot that will emit fire or obnoxious odors or that will cause any noise or other effect which would disturb the peace, quiet, comfort or serenity of any resident of the Subdivision.

Section 7. No clothing, laundry, rugs or wash shall be hung from or spread upon or from any patio, fence, window or exterior portion of a unit or in or upon common element. No clotheslines will be permitted.

Section 8. Sanitary Sewer. The sewer system constructed in the Subdivision is a sanitary sewer only. No residence or other permitted structure may have any plumbing located in its basement or any below ground level floor connected by gravity to the sanitary sewer, unless the top of the nearest upstream manhole or cleanout with a pop-off cover on the sanitary sewer is a minimum of one (1) foot lower than the elevation of the basement or floor in question. All plumbing located in such basements or below ground level floors shall be connected to an appropriate pump to direct the discharge from such plumbing to the sewer. No surface water, wall perimeter tile drainage or downspout drainage may be directed to the sanitary sewer.

The right to remonstrate against annexation by the Town of Newburgh of any and all lots contained in the Subdivision has been released by the owners and Developers of the Subdivision. Said release of the right to remonstrate against annexation is binding upon all successors in title on any Lot in the Subdivision.

Section 9. Drainage. The existing natural drainage courses and man-made drainage facilities in the Subdivision shall not be altered without the prior written approval of the Declarant. It shall be the obligation of the owner of each Lot or Building Site to keep and maintain a natural or man-made drainage course of facility located on such building Lot or site clean, open and unobstructed.

Section 10. Detached Structures. “ Out buildings “, yard barns are not allowed to be constructed on any lot within the Subdivision. An exception is provided to the developer during the construction of the Subdivision to have a storage barn if deemed necessary by the developer.

Section 11. Garbage and Refuse Disposal. Each Lot owner shall keep the Lot free of garbage, sewage, ashes, rubbish, bottles, cans, waste matter and other refuse. Accumulated trash, garbage or other waste or debris shall be kept in sanitary containers out of sight and shall be disposed of in a timely manner. All containers, incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be kept in such manner as to avoid an unsightly appearance within the Subdivision.

Section 12. Parking and Vehicles. No vehicle shall be regularly or habitually parked upon any street in the Subdivision. No trucks or commercial-type vehicles nor more than two (2) automobiles (including noncommercial pickup trucks) shall be regularly or habitually parked in the driveway of any Lot. No van, camper, boat, motor home, recreational vehicle, truck, inoperative vehicles or other such vehicles shall be regularly or habitually parked upon any Lot/driveway or premises in the Subdivision, unless parked within an enclosed garage. Each Lot owner is required to maintain adequate space in the owner’s garage to allow parking of two vehicles in the garage at all times.

Section 13. Firearms. There shall be no hunting with firearms or other weapons within the Subdivision. No firearms shall be discharged within the Subdivision.

Section 14. Fences, Walls, Shrubs and Trees. No fence or wall shall be erected on any Building Site nearer to the street than the front wall of the dwelling, except retaining walls or decorative fencing which has received the prior written approval of the Declarant or the Board of Directors of the Association. Fences, walls or hedges running parallel with or extending behind the front wall of a dwelling shall not exceed six (6) feet in height and shall be in harmony with the architectural character of the Subdivision. Trees, shrubs and other planting shall be planted and maintained in such manner as not to create a traffic safety hazard or distract from the appearance of the Subdivision.

Section 15. No lot owner shall in any manner obstruct the access of abutting lot owners to the use of the driveway. Maintenance of the driveway is the responsibility of the lot owners. No chronic parking is allowed in the driveway. Lot owners are encouraged to park all vehicles within the garage. Guest's are allowed to park in front of the garage.

Section 16. Postal Box. To insure consistency, the developer and or the Architectural Committee will determine the type and style of all mail/newspaper boxes to be used within the Subdivision.

Section 17. Prohibited Appurtenances. Satellite dishes, antennas, solar collectors, and similar devices shall be prohibited, unless they are located and or screened so as not to be visible from the street or from other lots. Prior approval of any construction or erection of such devices must have prior approval of the developer and or the Architectural Committee.

Section 18. Acceptance of Restrictions. The acceptance of a deed or other contract of instruments of conveyance transferring title to any Lot or building site in the Subdivision by any person or entity of each and all of the conditions, covenants and restrictions herein set forth, regardless of whether the same be set out or specified in such instrument of conveyance.

#### ARTICLE XII – OWNER'S MAINTENANCE RESPONSIBILITY

Each Owner shall maintain, replace and keep in good repair, all portions of the structure, postal box, fencing and paving on his Lot. Each Owner is also responsible for maintaining any landscaping within the yard and any trees, shrubs, plantings.

#### ARTICLE XIII – DAMAGE OR DESTRUCTION

Section 1. Damage to Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other disaster, the insurance proceeds, if sufficient to reconstruction or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destroyed Common Area are insufficient to effect a complete repair, the Association shall present to the members a notice of a special assessment for approval by the membership in accordance with Article V, Section 4. If such assessment is approved, the Association shall make such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may be applied in accordance with the wishes of the membership as expressed by the written consent of sixty-seven (67%) percent of the Owners other than Declarant, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees of their respective Lots, if any. The assessment as to each Owner and Lot shall be equal to the assessment against every other Owner and Lot. Such assessment shall be due and payable as provided by resolution of the Board of Directors, but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot and the improvements therein, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

Section 2. Damage to Home. In the event of damage or destruction to all or a portion of any home in the subdivision, the Owner thereof will restore the property to its original state within a reasonable time after such damage occurs.

#### ARTICLE XIV – GENERAL PROVISIONS

Section 1. Enforcement. The Association or the Owner or Owners of any of the Lots may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration or any rules or regulations promulgated by the Association which are consistent with this Declaration by proceedings at law or in equity against any person or persons or against the Association violating or attempting to violate any of the said rules, regulations, restrictions and limitations, either to recover damages for such violation, including reasonable attorney's fees incurred in enforcing these covenants, or to restrain such violation or attempted violation or to modify or remove structures fully or partially completed in violation hereof, or both. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall not be liable to reimburse any Owner for attorney's fees or costs incurred in any suit brought by an Owner to enforce or attempt to enforce these covenants.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless amended as herein provided, all other provisions, covenants, conditions, restrictions and equitable servitude's contained in the Declaration shall be effective until terminated by the vote of Members holding at least sixty-seven (67%) percent of the voting power of Members of the Association. The termination of this Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association stating that this Declaration has been terminated by the vote of Members as provided herein.

Section 4. Amendment of Declaration by Declarant and Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by either Declarant prior to the sale of the second Lot in the unit or by Members of the Association holding at least sixty-seven (67%) percent of the voting power of the Association present in person or by proxy at a duly constituted meeting of the Members. The approval of any such amendment or repeal shall be evidenced by the certification by the Board of Directors of the Association of the vote of Members. The amendment or repeal shall be effective upon the recordation in the Warrick County Clerk's Office, Boonville, Indiana, of a certificate executed by the President or Vice President and the Secretary or Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the Members and certified by the Board of Directors as set forth above.

Section 5. Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of Articles V and X of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate or amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Properties has been sold and conveyed by Declarant.

Section 6. Power of Attorney Granted for Amendment of Subdivision Plat. Declarant hereby reserves and is granted the right and power to amend at any time prior to the sale of the last Lot by Declarant to the first Owner thereof (other than Declarant), and from time to time the Subdivision Plat affecting the Property. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make a consent to such amendment on behalf of each Owner. Each Owner hereby designates Declarant, its successors and/or assigns, to be his attorney-in-fact for any and all purposes relating to the amendment of the Subdivision Plat as set forth in this Section, including but not limited to, the execution of any and all instruments which need to be executed by the Owners in order to fully effectuate any such amendment. Said power of attorney does not give Declarant the right to modify

property lines of Lots that have been previously deeded to owners, and is limited to modifying only the Lots owned by the Declarant. The power of attorney herein is a durable power of attorney, which shall not terminate upon the death or disability of any Owner. This power of attorney shall be binding upon all assignees, successor, heirs and owners.

Section 7. Special Rights of First Mortgagees. Any First Mortgagee (meaning a mortgage with first priority over other mortgages) of a mortgage encumbering any Lot, upon filing a written request therefor with the Association, shall be entitled to (a) written notice from the Association of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligation under this Declaration, the Articles of Incorporation, the Bylaws or the rules and regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Board of Directors or Members of the Association; (e) designate a representative to attend any such meeting; (f) receive written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (g) receive thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles of Incorporation or by the Bylaws; (h) receive thirty (30) days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Area following a decision of the Association to assume self-management of the Common Area; and receive immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Area if the cost of reconstruction exceeds TEN THOUSAND (\$10,000) DOLLARS and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Area.

Section 8. First Mortgagee Right to Pay Taxes and Insurance Premiums. Any such First Mortgagee singly or jointly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against any of the Common Area and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Area or Units, and the First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

Section 9. Association Right to Mortgage Information. Each Owner hereby authorizes any First Mortgagee holding a mortgage on such Owner's Lot to furnish information to the Association concerning the status of such First Mortgage and the loan, which it secures.

Section 10. Special Approvals by First Mortgagees. Unless at least sixty-seven (67%) percent of the First Mortgagees (based on one vote for each mortgage owned) of Lots in the Association have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of Access Easements, Utility Easements, Drainage Easements and Water Facilities Easements or easements for other public purposes consistent with the intended use of such property by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Lots, including the architectural design of the exterior appearance of Units, or the upkeep of lawns and planting on the Common Area; (d) fail to maintain the casualty, fire and extended coverage insurance on insurable Association Properties or Units, as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses to any Association Properties for other than the repair, replacement or reconstruction of the improvements which are damaged or destroyed; (f) amend any material provision of this Declaration; and (g) establish self-management by the Association when professional management has previously been required by any First Mortgagee or insurer or guarantor of a first mortgage on a Lot. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If a First Mortgagee who receives a written request for approval of the proposed act, omission, change or amendment does not deliver or post to the requesting party a negative response within thirty (30) days, it



shall be deemed to have approved such request. To be eligible either to approve of or object to any such written request for approval, a First Mortgagee must have previously given the Association written notice of the existence of its mortgage. Eligible insurers and guarantors of a First Mortgagee shall have the same rights as eligible First Mortgagees.

Section 11. Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, each notice shall be sent postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

The undersigned person executing this instrument on behalf of Barrington Development Group, Inc., represent and certify that they are duly elected officers of said corporation and have been fully empowered, by proper resolution of the Board of Directors of said corporation, to execute and deliver this instrument; that said corporation has full corporate capacity to enter into this declaration of covenants and restrictions; and all necessary corporation action has been taken and done.

IN WITNESS WHEREOF, Barrington Development Group, Inc., has set its hand and seal  
this \_\_\_\_ day of \_\_\_\_\_.

Barrington Development Group, Inc.

By: \_\_\_\_\_  
Bruce A. Miller, President

Attest:

\_\_\_\_\_  
Carole L. Miller, Secretary

STATE OF INDIANA            )  
  ) :SS:  
COUNTY OF WARRICK        )

Before me, a Notary Public in and for said county and state, personally appeared Bruce A. Miller and Jack Tubbs, the President and Secretary, respectively, of Newburgh Development Group, Inc., who acknowledge the execution of the foregoing instrument for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

Residing in \_\_\_\_\_ County

My commission expires:

This instrument prepared by Barrington Development Group, Inc., by Bruce A. Miller, President.