

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE VILLAGES AT PEBBLE BROOK**

THIS DECLARATION (hereafter called “the Declaration” or “this Declaration”) made this 7th day of July, 1992, by THE VILLAGES AT PEBBLEBROOK, L.P. (hereinafter called “Declarant”).

WITNESSETH:

**This instrument Recorded 7-8, 1992
Sharon K. Cherry, Recorder, Hamilton County, Indiana**

WHEREAS, Declarant is the owner of the real estate in Hamilton County, Indiana, more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (hereinafter referred to as the “Real Estate”); and

WHEREAS, Declarant may hereafter become the owner of the real estate more particularly described in Exhibit “B” attached hereto and incorporated herein by reference (hereinafter referred to as the “Additional Real Estate”); and

WHEREAS, Declarant is in the process of creating on the Real Estate a residential community with public streets, common facilities and landscaped areas, for the benefit of such residential community, a part to be known as THE VILLAGES AT PEBBLEBROOK – MEDINAH VILLAGE; a part to be known as THE VILLAGES AT PEBBLEBROOK – AUGUSTA VILLAGE; a part to be known as THE VILLAGES AT PEBBLEBROOK – HERITAGE VILLAGE; and a part to be known as PALMER WOODS; and

WHEREAS, Declarant desires to subdivide and develop the Real Estate (and may in the future desire to subdivide and develop such portions (or all) of the additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided as generally shown on a Secondary Plat or Plats, hereafter intended to be recorded by Declarant, by designating certain parts of the Property as Utility Easement (UE) (as hereinafter defined); by designating certain parts of the Property as Utility and Drainage Easement (U & DE) (as hereinafter defined); by designating certain parts of the Property as Landscape Easement (LSE) (as hereinafter defined); by designating certain parts of the Property as Common Area (CA) (as hereinafter defined); by designating certain parts of the Property as Restricted Common Area (RCA) (as hereinafter defined); by designating certain parts of the Property as Public Streets (PS) (as hereinafter defined); and by designating certain other parts of the Property as Lots; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities (if any) therein contained, and to this end, Declarant desires to subject the Real Estate and each owner of all or part thereof to the terms of this Declaration, as hereinafter provided; and

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

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name “The Villages of Pebblebrook Homeowners Association, Inc.”, or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, title or interest in the Property, their heirs, successors and assigns.

ARTICLE I
DEFINITIONS

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

- A. “Applicable Date” shall mean the “Applicable Date” as defined and determined in accordance with Section 3.B of Article III hereof.
- B. “Association” shall mean The Villages at Pebblebrook Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.
- C. “Board” or “Board of Directors” shall mean the board of directors of the Association.
- D. “Common Area” shall mean (i) those portions, if any, of the Property shown upon any recorded subdivision plat of the Property, or any part thereof (including the Initial Plat), which are not Lots (reserving, however, unto Declarant the right to re-plat any of such areas as part of one (1) or more Lots, other than portions thereof (such as streets) which are dedicated to the public, whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, and (ii) such portions of the Property (if any) as are hereafter declared to be “Common Area” by an instrument executed and recorded by Declarant, whether or not such areas comprise part of all of a lot or lots shown upon any recorded subdivision plat of the Property.
- E. “Declarant” shall mean The Villages At Pebblebrook, L. P. and any successors and assigns of who it designates in one or more written recorded instruments to have the right of Declarant hereunder, including, but not limited to, any mortgage acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations of liabilities of the Declarant hereunder.
- F. “Initial Plat” shall mean the subdivision plat(s) of the Real Estate.
- G. “Restricted Common Area”, if such term is used herein, in any supplement hereto or in any subdivision plat, shall mean such portions of the Common Area as to which the use thereof is limited or restricted in accordance with the terms hereof, or any supplement hereto, or any subdivision plat of the Property to the Owner or Owners of one or more but less than all of the Lots, and which are clearly designed and intended for use by the Owner or Owners of one or more but less

than all of the Lots, and which are appurtenant to one or more but less than all of the Lots and which are not necessary for the beneficial use and enjoyment of all of the Lots.

- H. "Living Unit" shall mean a residential housing unit designed or intended for use as living quarters for one family or housekeeping unit. For the purpose of determining membership in the Association, each Living Unit as initially constructed on a Lot by Declarant or others shall be considered as a separate and individual unit.
- I. "Lot" shall mean and refer to any and each plot of land included in the Property (with the exception of Common Area) designed and intended for use as a building site for a Living Unit, and identified as a lot on any recorded subdivision plat of the Property or any part thereof (including the Initial Plat).
- J. "Member" shall mean any person or entity holding membership in the Association as provided in Article III hereof.
- K. "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.
- L. "Mortgagee" shall mean any person or entity named as the Mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage.
- M. "Real Estate" shall mean the parcel or parcels of real estate in Hamilton County, Indiana, described in Exhibit "A" attached to and incorporated in this Declaration.
- N. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- O. "Person", whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- P. "Property" shall mean and refer to the Real Estate together with such portions of the Additional Real Estate as has from time to time been subjected to and at any subject to this Declaration.
- Q. The parts of the Property designated on any Plat(s) as Utility Easement; Utility and Drainage Easement; Landscape Easement; Drainage Easement; and Public Streets are reserved for those purposes and those described in the covenants and restrictions recorded in conjunction with any Plat(s).

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions, and provisions of this Declaration. As of the date of execution of this Declaration, the Property consists solely of the Real Estate. The owner of any Lot at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and

assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

Section 2. Declarant's Right of Expansion. Declarant shall have, and hereby reserves the right, at any time, and from time to time, on or before the Applicable Date to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration, when Declarant places of record in Hamilton County, Indiana, an instrument so declaring the same to be a part of the Property, which declaration may be made as part of a subdivision plat of any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Upon the recording of any such instrument on or before the Applicable Date, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add to and expand the Property, as described in this Section 2, as to any part or parts of the Additional Real Estate shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the Applicable Date. Such expansion of the Property is entirely at the discretion of Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the real Estate, or any other portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically be voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner of Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

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

Section 3. Voting. The Association shall have two (2) classes of voting membership, as follows:

- A. **Class A.** Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one (1) vote of members upon which the Class A members are entitled to vote.

When more than one person holds title to 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 be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

- B. **Class B.** Class B members shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each Lot owned by them or it and five (5) votes for each single numbered parcel of land shown upon and identified as a Lot on any recorded plat of the Real Estate or the Additional Real Estate. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of both of the Class B members as such is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after ninety-five percent (95%) of the Lots in the Property have been conveyed to Owners other than Declarant; (c) six (6) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; provided, however, that in the event any portion of the Additional Real Estate is added to the Property by Declarant pursuant to its right and option to expand the Property as hereinabove reserved, then the time period provided in this subsection (c) shall be eight (8) years after the date of recording of such first conveyance, rather than six (6) years; or (d) ten (10) years from the date of this Declaration (the applicable date being herein referred to as the "Applicable Date").

Declarant shall each be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of the Class B membership.

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

Section 5. Board of Directors. Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Until the Applicable Date, the Board shall consist of three (3) persons designated by Declarant, as long as it shall own one or more lots.

ARTICLE IV PROPERTY RIGHTS

Section 1. General Provisions.

- A. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the owner and mortgages, if any, from time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.
- B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this

Declaration is recorded and ending January 1, 2012, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area (except for such portions thereof, if any, as are Restricted Common area), limited, however, to and for the uses and purposes for which any portion of the Common Area is designed and intended, which right and easement shall include, but not be limited to, use and enjoyment of open spaces and all other parts of the Common Area (other than Restricted Common Areas, if any). Such right and 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 pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same;
- B. The right of the Association to suspend the voting rights and right to the use of recreational facilities, if any, situated upon the common Area (but not rights of access to Lots) 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 an infraction of its published rules and regulations;
- C. The right of the Association to levy assessments as provided in this Declaration; and
- D. The right of the Association and Declarant reserved under this Article IV or elsewhere in this Declaration.

Section 3. Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-Laws of the association, his right of enjoyment to the Common area to residents of his Lot, including the members of his family, his tenants, or contract purchasers.

Section 4. Association's Rights and Obligations.

- A. The Association shall have the obligation to manage, repair, maintain, improve and operate the Common Area and the Landscape Easements.
- B. The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 4.A. next hereinabove, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgage shall have received the prior written approval specified hereinbelow.
- C. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required hereinbelow.
- D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may at any time be granted by Declarant or the Association (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area.
- E. Anything herein apparently to the contrary notwithstanding, except as otherwise expressly herein provided for, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified in hereinbelow.

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except, as otherwise specified herein. In addition, until the last single numbered parcel of land shown upon, and identified as a lot on

any recorded plat(s) of the Real Estate (whether heretofore or hereafter recorded, including the Initial plat) is conveyed to an Owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Real Estate and the right to maintain and use facilities (including, but not limited to, model Living Units) and signs upon the Common Area and any other portions of the Property (other than Lots owned by an Owner other than Declarant) for the purpose of marketing units, and to invite and escort the public thereon for such purpose.

Section 6. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any subdivision plat of any part of the Property shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Areas being reserved to the Owners and the Association as provided in this Declaration, but subject, however, to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration. The foregoing notwithstanding, the owners of lots in Sections 1, 1-A, 2 and 3 of Pebblebrook, a subdivision in Hamilton County, Indiana per the plat(s) and update(s) thereof as recorded in the Office of the recorder of Hamilton County, Indiana, shall have the right to use the common facilities, if constructed, subject to such rules and regulations and charges established from time to time by the Board.

Section 7. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any living Unit or any improvements to any Living Unit encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Living Unit shall exist for the continuance of any such encroachment on the Common Area.

Section 8. Parking Rights. Each Lot contains or will contain parking areas (including garages) for the use of its Owner.

Section 9. Title to Common Area Declarant hereby covenants that it shall convey and transfer the Common Area included in and constituting a part of the Real Estate (if any) to the Association prior to the first conveyance of a Lot within the Real Estate to an Owner other than Declarant. Each such portion of the Common Area so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to any dedicated or public street or road rights-of-way affecting the same and all easements, covenants, limitations and restrictions then or record, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association.

ARTICLE V ASSESSMENTS

Section 1. Personal Obligations. Each owner of a Lot by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment of provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under the Declaration, which expenses may include, but shall not be limited to, the expenses and costs of hazard and liability insurance for Common Areas and any other common property; snow removal, trash removal, sewer charges and water charges (if payable by the Association); street lighting (if provided by the Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be

maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in advance in twelve equal monthly installments on the first day of each and every month or, if so determined by the Association, in such other periodic installments as may be specified by the Association. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the Recorder of Hamilton County, Indiana. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Living Unit.

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

Section 3. Annual Assessments. Until December 31, 1993, the maximum annual assessment shall be at the monthly rate of twenty-one Dollars (\$21.00) per Lot.

- A. From and after December 31, 1993, the maximum annual assessment may be increased each year not more than 10% above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of membership.
- B. From and after December 31, 1993, the maximum annual assessments may be increased by more than 10% above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose.
- C. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Section 3 or 4, shall be sent to all Members not less than ten (10) days nor more than sixty (60) in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast twenty five percent (25%) [changed from 66% by vote at the January 1999 Annual Member meeting] of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. On such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected on a monthly basis (or other periodic basis, if and as determined by the board) and special assessments

shall be collected as the Board determines. The provisions of this Section 6 are subject to the provisions of Section 13 of this Article V as to all Lots owned by Declarant.

Section 7. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to each Lot subjected to this Declaration on the first day of the month following the month of recording of the instrument by which such Lot is conveyed to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

Section 8. Commencement of Annual Assessments. By November 1 of each year the Board shall fix the amount of the annual assessment against each Lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner. The provisions of this Article V notwithstanding, annual or special assessments shall not be due and payable on each Lot owned by the Declarant and on each Lot owned by the Estridge Group, Inc.

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

Section 10. Nonpayment of Assessment. Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eighteen percent (18%) [rate set by the Board in 1999] per annum and shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

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

The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

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

Section 13. Limitations on Assessments Owed by Declarant. Notwithstanding anything to the contrary contained herein, Declarant shall not be obligated to pay, as to any and all Lots owned by it from time to time, any assessments (whether regular annual assessments or special assessments) payable hereunder by Owners.

ARTICLE VI

ARCHITECTURAL CONTROLS

Section 1. Architectural Control Committee Authority. No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Property, additional fences, or changes in existing fences, hedges, walls, walkways and other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the Living Units and other buildings and improvements on the Property, until the written plans and specifications showing in reasonable detail the nature, kind, shape, height, materials (including color), location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Property by an Architectural Committee composed of the Board of Directors of the Association or three (3) or more representatives appointed by the Board of Directors. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said written plans and specifications have been submitted to it, or if no suit to enjoin the making of such additions, alterations or changes or to force the cessation thereof has been commenced within sixty (60) days of such submission, such approval will be deemed to have been given. If on such submission has been made to the Architectural Committee, suit to enjoin or force the removal of such additions, alterations or changes may be instituted at any time by the Association or any Owner. During the time which the Association has a Class B member, the decisions of the Architectural Committee must have the written approval of the Declarant. The approvals of the Architectural Committee required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required to be obtained from any other persons or governmental agencies pursuant to the terms of the Initial Plat, or any other plat or otherwise.

Section 2. Restoration in Accordance with Original Plans. Any restoration or repair of the Common Area or exterior of Living Units, after partial condemnation or damage due to fire or other casualty, shall be performed substantially in accordance with this declaration and the original plans and specifications for the same, unless other action is approved by the Architectural Committee.

ARTICLE VII

OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Area The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area and all improvements (if any) thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive

and sanitary condition, order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation of responsibility of Owners of Lots) shall include, but not be limited to, the following: the maintenance and repair of the Common Area improvements, if any; all other improvements or material located within or used in connection with the Common Area; and the Landscape Easement.

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

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property (if any) to resident of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

Section 4. Utilities. The Association shall pay as a common expense all charges for electricity, water, sewer and other utilities used upon the Common area.

Section 5. Hazard and Liability Insurance for Common Property. The Association shall procure fire and extended coverage insurance on insurable Common Areas and other common property on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement only); and shall use the proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable Common Areas and other common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages ("First Mortgage") on Living Units, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Living Units establishing entitlement to such reimbursement.

ARTICLE VIII

OWNERS' MAINTENANCE

Section 1. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Living Unit, patios and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association. An Owner shall do no

act not work that will impair the structural soundness or integrity of any structure, or an adjoining Living Unit, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units, or their Owners.

ARTICLE IX

GENERAL RESTRICTIONS, OBLIGATION AND RIGHTS APPLICABLE TO PROPERTY

Section 1. Living Unit and lot Restrictions. No more than one Living Unit shall be erected or maintained on each Lot. No Living Unit shall be used for purposes other than as a single family residence, nor shall any trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model Living Units and business and sales offices by Declarant during the construction and sale periods.
- B. The maintenance of offices by the Association or its designated manager for purposes of management of the Property.
- C. Lease, rental or use of a Living Unit for purposes consistent with this Section.
- D. The use of a Living Unit by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 2. Common Area Restrictions. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area, not shall any “for sale” or “for rent” signs or any window display advertising be maintained or permitted on any part thereof, except that Declarant reserves the right for itself or its agents to maintain model Living Units, business and sales offices, storage areas and construction offices in the Common Area during the construction and sales period until the last Lot existing as part of the Property on the Applicable Date is conveyed to an Owner other than Declarant, and to place “for sale”, “for rent” or any other signs on any part of the Common Area and to use any part of the Common Area for sale or display purposes during such period.

Section 3. Obstruction. There shall be no obstruction of the Common Area not shall anything be kept or stored on any part of the Common Area without the prior written consent of the Association except construction materials and equipment during the construction period or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

Section 4. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity. Would pay, without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof or of the exterior of the Property and buildings thereon shall be committed by any Owner or any invitee or tenant or any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitee or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed in any Living Units, on any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 5. No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Common Area, or on a Lot or Limited Common Area so as to be visible from outside the Lot or the Common Area. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly materials.

Section 6. Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in or on any Lot or on the Common Area or any part thereof, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days written notice from the Board, and provided further, that upon written request of 25% of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

Section 7. Prohibited Structures. No structure of a temporary character, trailer, boat, camper-bus, tent or shack shall be maintained on any Lot outside of a garage or other approved structure, nor shall any garage or other building except a Living Unit be used on any Lot at any time as a residence or sleeping quarters, either temporarily or permanently.

Section 8. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the lot upon which the same are located. The design of such screened enclosure must be approved by the Association in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. Notwithstanding, the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles (including station wagons and small trucks such as pickups and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Area and Restricted Common Area, either permanently or temporarily.

Section 9. Signs. No signs of any kind (other than designations, in such styles and materials as the association shall by the rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot or Common Area, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require, and except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale period.

Section 10. Antennae. Except with prior written approval and the authorization of the Board, no exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Property, or on the Property itself.

Section 11. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Living Unit or Lot may be leased for a period of less than 90 days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Living Unit.

Section 12. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including the Common Area, as the Board in its sole discretion deems appropriate or necessary.

Section 13. Accessory Outbuilding Prohibited. No accessory outbuildings shall be erected on any Lot or Lots without the prior written approval of the Committee.

Section 14. Occupancy or Residential Use of Partially Completed Living Unit. No Living Unit shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed or occupancy in accordance with the approved building plan. The determination of whether the Living Unit shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 15. Other Restrictions. The Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Property, all of which are incorporated herein by reference.

Section 16. Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Property shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration, Declarant or Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, clean or perform such other acts as may be necessary to make such Lot and improvements thereon, if any, conform to the requirements of this Declaration. The cost therefore to Declarant shall be collected in a reasonable manner from Owner. Declarant or its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the Applicable Date, the Association shall succeed to and be vested with the rights of the Declarant and provided for in this Section 16.

Section 17. Development and Sale Period. Nothing contained in this Article IX shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Property and sale of Lots. Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to, the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

ARTICLE X

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

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

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Living Unit and the address of such party (a holder of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an “eligible mortgage holder” and an insurer or governmental guarantor of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an “eligible insurer or guarantor”), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- A. Any condemnation loss or any casualty loss which affects a material portion of the project or any lot or Living Unit on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- B. Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a lot or Living Unit subject to a

First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of sixty (60) days;

- C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- D. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article; and
- E. Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

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

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

Section 5.A. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law of this Declaration) of the First Mortgagees of the Lots or their assigns (based upon one vote for each First Mortgage owner), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder including the Declarant) or the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association nor the Owner shall be entitled to:

- A. terminate the legal status of the project (Except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);
- B. by act or omission, seek to abandon, petition, subdivide, encumber, sell or transfer the Common Area; provided, however, that granting of easements for public utilities or for other public purposes consistent with the intended use of the Common area shall not be deemed such a transfer;
- C. use hazard insurance proceeds for losses to any Common Area or other common property for other than the repair, replacement or reconstruction of such property;
- D. add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:
 - (1) Voting;
 - (2) Assessments, assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of the Common Area (or exterior maintenance of Living Units if applicable);
 - (4) Insurance of Fidelity Bonds;
 - (5) Rights to use of the Common Area;
 - (6) Responsibility for maintenance and repair of the several portions of the projects;
 - (7) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
 - (8) Boundaries of any Lot;
 - (9) The interests in the general Common Area;
 - (10) Convertibility of Lots into Common Area or of Common Area into Lots;

- (11) Leasing of Lots or Living Units;
- (12) Imposition of any right to first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot or Living Unit;
- (13) Any provision which are for the express benefit of First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots, Except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Areas which might occur pursuant to any plan of expansion phased development contained in this declaration;

E. By act or omission change, waive or abandon any scheme of regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units.

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

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

Section 5.B. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration if, at the time such actions are taken, the Federal Housing Administration or the Veterans Administration is then the Owner of a Lot, an eligible mortgage holder or an eligible insurer or guarantor:

- A. dedication to the public or to or for any public use or purpose of any part of the common Area; provided, however, that such approval is not and shall not be required for the granting of easements to utility companies, public or private, for the installation maintenance repair, replacement and servicing of equipment and facilities necessary to provide all utilities services to the Property; and
- B. amendment of this Declaration; provided however, that such approval is not and shall not be required for any amendment or supplement to this Declaration made by Declarant or the Owners of the Conveyed Lots for any purposes set forth in Subparagraphs (I) through (V), inclusive, of Section 5. A. hereinabove.

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

Section 7. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or

other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

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

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

ARTICLE XI INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of, the agencies and entities mentioned or referred to herein, to-wit:

- A. Master or blanket type of policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Common Area (including all of the fixtures installed therein). Said policy shall afford, as a minimum, protection against the following:
- (1) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
 - (2) All other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows:

"The Villages at Pebblebrook Homeowners Association, Inc. for the use and benefit of the individual Owners".

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

If reasonably available, such policies shall include:

- (1) Agreed Amount Endorsement (or like endorsement);
- (2) Inflation guard Endorsement;
- (3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged

- portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril;
- (4) Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location; and
 - (5) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act of neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.
- B. Workmen's compensation, occupational disease and like insurance (if the Association has eligible employees);
- C. Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:
- (3) covering events occurring anywhere on the Common Area (and public and private ways) or arising out of or in connection with the use, ownership or maintenance of the Common Area;
 - (4) covering without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and legal liability arising out of lawsuits related to employment to contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
 - (5) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities to the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the association; and
 - (6) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.)
- D. Such other insurance as the Board of Directors may determine.
- E. All such policies must provide that they may not be cancelled or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owner's Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Living Unit, and other personal property, and fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant.

Section 3. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be names as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property of liability insurance. Any Insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

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

**ARTICLE XII
EMINENT DOMAIN**

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

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

**ARTICLE XIII
GENERAL PROVISIONS**

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association may be by any proceeding at law or inequity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants, and failure by the Association or by 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. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the court shall be assessable against and payable by any persons violating the terms contained herein.

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

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

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

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

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

**ARTICLE XIV
ADMENDMENT**

Except as hereinafter provided, this declaration may be amended during the initial term provided above by an instrument signed by not less than ninety percent (90%) of the Owners and thereafter by an instrument signed by not less than seventy-five (75%) of the Owners. Certain amendments also require additional approval as specified in this Declaration.

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

IN WITNESS WHEREOF, THE VILLAGES AT PEBBLEBROOK, L. P., have caused this document to be executed as of the day and year first above written.

(See copy/original of Instrument 9225788, Hamilton County, Indiana for signatures and notary.)