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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND
GRANT AND RESERVATION OF EASEMENTS
FOR
FALCON RUN VILLAGE**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT AND RESERVATION OF EASEMENTS
FOR
FALCON RUN VILLAGE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on this ____ day of _____, 1999, and is made by HERMAN ASSOCIATES, INC., an Indiana Corporation (hereinafter referred to as "Declarant").

PREAMBLE:

WHEREAS, Declarant is the fee simple owner of certain property located in the City of Indianapolis, County of Marion, State of Indiana, as is more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"); and

WHEREAS, Declarant intends to sell and convey the residential lots situated within the platted areas of such Property and before doing so desires to subject to and impose upon all areas estate within such Property mutual and beneficial restrictions, covenants, conditions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and future homes owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in Exhibit "A" shall hereafter be held, sold and conveyed subject to the following restrictions, easements, conditions and covenants contained in this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
Definitions**

Unless otherwise expressly provided, the following words and phrases when used herein shall have the following specified meanings.

1.1 Allocated Interest. Allocated Interest shall mean and refer to the following interests allocated to each Lot: Exclusive Use Areas, Limited Common Areas, easements and licenses within the Project, liability for Common Expenses and one (1) vote in the Association.

1.2 Applicable Date. Applicable Date shall mean the date upon which the Class B membership in the Association shall cease and terminate as provided in Section 2.5(b) herein.

1.3 ARC. ARC shall mean the Architectural Review Committee created pursuant to Article IV hereof.

1.4 Articles. Articles shall mean the Articles of Incorporation of the Association, as such Articles may be amended from time to time.

1.5 Assessment. Annual. Annual Assessment shall mean a charge against a particular Owner and his Lot, representing a portion of the Common Expenses which are to be levied among all Owners and their Lots in the Property in the manner and proportions provided herein.

1.6 Assessment. Special. Special Assessment shall mean a charge: (a) against a particular Owner, levied by the Board after Notice and Hearing, which is directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Board, plus attorneys fees, costs, interest and other charges on such Special Assessments as provided for herein; or (b) which the Board may from time to time levy against a particular Owner and his Lot, representing a portion of the cost to the Association for reconstruction, maintenance or repair of any Improvements on any of the Common Areas. The assessment levied pursuant to 1.6(b) shall be levied among all the Owners and their Lots in the Property in the same proportions as Annual Assessments.

1.7 Association. Association shall mean Falcon Run Village Home Owners Association, an Indiana nonprofit corporation, its successors and assigns.

1.8 Association. Maintenance Funds. Association Maintenance Funds shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article V hereof.

1.9 Board. Board shall mean the Board of Directors of the Association.

1.10 Budget. Budget shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration.

1.11 Bylaws. Bylaws shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

1.12 City. City shall mean the City of Indianapolis, State of Indiana, and its various departments, divisions, employees and representatives.

1.13 Common Areas. Common Areas, as set forth on Exhibit "C" attached hereto, shall mean the entire Property, except the Lots, Limited Common Areas and Exclusive Use Areas. The Common Areas shall include, but are not limited to, the detention ponds, if any, private streets and driveways, park and any Improvements thereon, recreational areas and any Improvements thereon, landscape areas, parking areas, and clustered mailboxes, if any, that the Declarant may construct or install within the Property. In addition, the Common Areas shall include any portion of the Property which is: (a) dedicated to the City, or any other governmental

agency or municipality, over which the Association retains a duty to repair and maintain; or (b) owned in fee by the Association.

1.14 Common Expenses. Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Areas as defined in Section 1.13 above, and any Improvements thereon, or unpaid Special Assessments; the costs of any commonly metered charges for the Property; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, entry gates, if any, and other services benefitting the Common Areas; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes paid by the Association, including but not limited to, real estate taxes or any other municipal or governmental assessments; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portion thereof; and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners. The Common Expenses shall also include the water and sanitary sewer cost and expenses for all of the Lots and Residences.

1.15 Declarant. Declarant shall mean Herman Associates, Inc., an Indiana corporation, its successor in any merger, consolidation or liquidation and its assigns. As long as Arbor Homes, LLC ("Arbor") is the exclusive builder of single family homes on the Lots, Arbor shall have the same rights as the Declarant hereunder.

1.16 Declaration. Declaration shall mean this instrument as it may be amended from time to time.

1.17 Development Period. Development Period shall mean the period of time during which the Declarant owns at least one (1) Lot.

1.18 Exclusive Use Areas. Exclusive Use Areas shall mean those portions of the Property which are reserved for the exclusive use of the Owners of the Lot including, without limitation, the entry area on selected Lots, as indicated on Exhibit "C" attached hereto.

1.19 Family. Family shall mean one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household in a Residence.

1.20 Fiscal Year. Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.21 Guest. Guest shall mean any employee, tenant, visitor (whether or not for hire), licensee, agent or invitee of such Owner or Resident, including any transient visitor, or any Family member of the Owner or Resident.

1.22 Improvements. Improvements shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, roads, driveways, fences, screening walls, block walls, retaining walls, awnings, patio covers, stairs, decks, landscaping, antennae, satellite dishes, solar equipment, hedges, windbreaks, pools, spas, recreational equipment, entry gates, if any, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

1.23 Limited Common Areas. Limited Common Areas shall mean those portions of the Property over which exclusive easements are reserved for the benefit of one or more but fewer than all of the Owners, including without limitation the enclosed yard area directly adjacent to a Lot and given the same numerical designation as the Lot, as indicated on the Plat.

1.24 Lot. Lot shall mean and refer to any and each plot of land included in the Property designed and intended for use as a building site for a single family residence. Lot shall mean a "Lot." Each Lot shall be a separate freehold estate, as separately shown, numbered and designated on the Plat and intended for use by a single Family. In interpreting deeds, this Declaration and any Plats, the existing physical boundaries of the Lot or a Lot constructed or reconstructed in substantial accordance with the applicable Recorded Plat and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Plat or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the applicable Plat or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed.

1.25 Manager. Manager shall mean the Person employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, powers or functions of the Association as limited by this Declaration, the Bylaws and the terms of the agreement between the Association and said Person.

1.26 Member, Membership. Member shall mean any Person holding a Membership in the Association, as provided in this Declaration. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Restrictions.

1.27 Mortgage. Mortgage shall mean any recorded Mortgage relating to one or more Lots or other portion of the Property to secure the performance of an obligation.

1.28 Mortgagee, Mortgagor. Mortgagee shall mean a Person to whom a Mortgage is made. Mortgagor shall mean a Person who mortgages his or her property to another.

1.29 Notice and Hearing. Notice and Hearing shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws, Rules and Regulations or this Declaration.

1.30 Owner. Owner shall mean the Person or Persons, including Declarant, holding fee simple interest to a Lot, excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include a seller under an executory contract of sale but shall exclude Mortgagees.

1.31 Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.32 Plat. Plat shall mean the recorded Plat for all or any portion of the Property, as may be amended from time to time (Attached hereto as Exhibit "C", for reference purposes only, is the Plat.)

1.33 Property. Property shall mean the real estate described in the attached Exhibit "A".

1.34 Record, File, Recordation. Record, File, or Recordation shall mean, with respect to any document, the recordation or filing of such document in the Office of the Marion County Recorder.

1.35 Residence. Residence shall mean a residential single family housing residence designed and intended as living quarters for one (1) family or housekeeping residence.

1.36 Resident. "Resident" shall mean any person who is physically residing in a Residence, for so long as said person is so residing, including, but not limited to, an Owner or a tenant.

1.37 Restrictions. Restrictions shall mean this Declaration, the Articles, Bylaws and the Rules and Regulations of the Association, as may be amended from time to time.

1.38 Rules and Regulations. Rules and Regulations shall mean the rules and regulations that may be adopted by the Board, pursuant to this Declaration or the Bylaws, as such Rules and Regulations may be amended from time to time.

ARTICLE II

Falcon Run Village Home Owners Association

2.1 Organization of Association. The Association is or shall be incorporated under the name of Falcon Run Village Home Owners Association, as a nonprofit corporation organized under the laws of the State of Indiana.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in the Restrictions, together with the general and implied powers of an "association" and a nonprofit corporation, generally to do any and all things that such a corporation may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Restrictions. The Association shall further have the right to install or construct capital Improvements or the Common Areas. The Association may at any time, and from time to time reconstruct, repair, replace, maintain, or refinish any Improvement or portion thereof upon the Common Areas in accordance with the original design, finish or standard of construction of such Improvement; replace destroyed or damaged trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Areas.

2.3 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 by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or 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.

2.4 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.

2.5 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 for each lot owned with respect to each matter submitted to a 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 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. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (b) the expiration of the Development Period; or (c) six (6) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant. 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

2.6 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.

2.7 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 Bylaws. 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.

2.8 Proxies. Every Member entitled to vote or execute statements of consent shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed and dated by such Person or his duly authorized agent; provided, however, that the form of any proxy must be reviewed and approved by the Board prior to the meeting for which the proxy is being submitted; and provided further, that no such proxy shall be valid after the expiration of one (1) year from the date of its execution unless the proxy specifies a shorter term. A Member's proxy shall automatically terminate upon conveyance by that member of his fee title interest in all Lots owned by the Member. An Owner may revoke a proxy pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. Actual notice, in this provision, means a written statement signed by the Owner and delivered to Secretary prior to the meeting or attendance at the meeting by the Owner. A proxy is void if it is not dated or purports to be revocable without notice.

2.9 Actions. If a quorum is present, as set forth in the Bylaws, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by law or by the Restrictions.

2.10 Repair and Maintenance by the Association.

(a) Maintenance Standards. Subject to Article X pertaining to destruction of Improvements and Article XI pertaining to eminent domain, the Association shall paint, maintain, repair and replace the Common Areas and Improvements thereon or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Areas and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with prudent property management practices and the Budget. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Areas.

(b) Charges to Owners. All such costs of maintenance, repair and replacement of the Common Areas shall be paid for as Common expenses out of the Association Maintenance Funds, as provided in this Declaration. It shall be the affirmative duty of the Board to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected for any violation thereof. The cost of any maintenance, repair or replacement by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of an Owner, Resident, or such Owner's or Resident's Family, or Guest shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner.

2.11 Repair and Maintenance by Owners. Each Owner or Resident shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his Residence, as defined in Section 1.33 hereof, including the interior and exterior of the Lot and the roof thereof, as well as the interior of any fencing facing the Owner's Limited Common Area, except any Common Areas located thereon, which are to be maintained by the Association pursuant to Section 2.10.1. In addition to the foregoing, each Owner is responsible to maintain and repair and is liable for any expense related to the utility connections within the Lot, including, but not limited to, the sewer clean out, the water valves and power meter appurtenant to said Lot. If any Owner fails to maintain or repair the Residence, or the fencing facing the Limited Common Area, as required by this Section 2.11, then the Association shall have the right to enter upon or within the Residence, to perform such maintenance and repair and to levy a Special Assessment against such Owner as described in Section 2.10.2.

2.12 Use of Agent. The Board, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The maximum term of any such

contract ("Management Contract") shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association, in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Property shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto with cause upon no more than thirty (30) days' written notice to the other party, and without cause and without payment of a termination fee upon no more than ninety (90) days' written notice to the other party.

ARTICLE III Owners' Property Rights

3.1 Legal Description of Lot. The components of each Lot shall be substantially as follows:

- (a) Fee simple title to the applicable Lot as shown on the Plat. The Lots are numbered 1 through 48 on the Plat.
- (b) An exclusive easement appurtenant to each Lot over the Limited Common Area allocated to such Lot and given the same numerical designation as the Lot, as shown on the Plat.
- (c) An exclusive easement appurtenant to each Lot over the Exclusive Use Area, if any, allocated to such Lot as shown on the Plat.
- (d) Nonexclusive easements for access, ingress, egress, use, enjoyment and other purposes, all as described in this Declaration.

3.2 Association Easement. The Association shall have an easement over the Common Areas for performing its duties and exercising its powers described in this Declaration. The Association's obligations to maintain the Common Areas in the Property shall commence upon the closing of the sale of the first lot, at which time the Annual Assessments shall also commence on the Lots in the Property. The Association shall also have an easement over each Residence, or any portion thereof, for the purpose of maintenance or repair of the Limited Common Areas or Exclusive Use Area, or any Improvements thereon, if the Owner of said Lot fails to repair or maintain the Residence pursuant to Section 2.11 of this Declaration.

3.3 Partition. There shall be no judicial partition of the Common Areas, or any part thereof, nor shall Declarant, any Owner or any other Person acquiring any interest in any Lot in the Property seek any such judicial partition. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Areas made without the Lot to which that interest is allocated is void.

3.4 Members' Easements in Common Areas. Subject to the provisions of this Declaration, every Member of the Association shall have, for himself, his Family and Guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Areas, and such easements shall be appurtenant to and shall pass with title to every Lot in the Property.

3.5 Extent of Members' Easements. The rights and easements of use and enjoyment of the Common Areas created by this Declaration shall be subject to the Restrictions, which include, without limitation, the following:

(a) The right of the Board to consent to or otherwise cause the construction of additional Improvements on the Common Areas and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Areas for the benefit of the Members of the Association;

(b) The right of the Board to grant easements, leases, licenses and concessions through or over the Common Areas;

(c) The right of the Board, to reasonably restrict access to maintenance and landscaped areas and similar areas of the Property;

(d) The right of the Board, to establish uniform Rules and Regulations for the use of the Common Areas.

(e) The right of the Board and pursuant to an agreement executed by Owners to whom a majority of the Association's voting power is allocated, including a majority of the voting power not allocated to Declarant, which agreement must be Recorded and which must specify a date after which the agreement will be void unless Recorded, to convey the Common Areas or to subject the Common Areas to a Mortgage;

(f) The rights and reservations of Declarant as set forth in this Declaration;

(g) The right of the Association to reasonably limit the number of Guests of the Owners using the Common Areas.

3.6 Members Rights in Limited Common Areas and Exclusive Use Areas. Subject to the provisions of this Declaration, including Section 3.7 below, each Owner or Resident has the right to exclusive use and enjoyment, for the purposes designated in this Declaration, of the Limited Common Areas and Exclusive Use Areas, if any, allocated to its Lot.

3.7 Extent of Members' Rights in Limited Common Areas and Exclusive Use Areas. The rights of exclusive use and enjoyment of the Limited Common Areas and Exclusive Use Areas created by this Declaration shall be subject to the Restrictions, which include, without limitation, the following:

(a) The reservation of an easement by the Association to permit it to enter upon the Limited Common Areas and Exclusive Use Areas to perform its duties as set forth in Section 3.2 hereof.

(b) The right of the Association, acting through the Board, to establish uniform Rules and Regulations for the use of the Limited Common Areas and Exclusive Use Area.

(c) Every Owner shall have an easement over another Owner's Residence for the limited purpose of maintaining or repairing his Residence, including the portion of the fence facing his Residence.

(d) Ten foot (10') and twenty foot (20') Drainage and Utility Easements as shown on the Plat.

3.8 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 expiration of the Development Period, 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 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 homes, and to invite and escort the public thereon for such purpose.

3.9 Private Streets. Declarant hereby covenants that it shall convey and transfer the private streets (as designated on the Plat) included in and constituting a part of the Property to the Association upon the completion of such private streets. The private streets so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and restrictions then of 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, and be further subject to the terms and provisions of this Declaration. Declarant reserves unto itself, its successors and assigns, and hereby establishes for each Owner, their guests and invitees, and all public and quasi-public vehicles, an easement for ingress and egress on and over the private streets. The terms "public vehicles" and "quasi-public vehicles" shall include, but shall not be limited to, vehicles operated for police and fire protection, ambulance and other emergency vehicles, for trash and garbage collection, and for mail and other delivery services operated in the performance of their duties.

3.10 Sanitary Sewer, Storm Sewer & Water Lines. The eight (8) inch sanitary sewer line servicing the property as shown on the Plat shall be dedicated to the City of Indianapolis, Indiana ("City") and shall be maintained by the City pursuant to the terms of the agreement with the City. Any damage to the area surrounding the sanitary sewer line caused by the City in the

maintenance of the sewer line shall be repaired and restored by the Association at the Association's expense and any such expense shall be treated as a Common Expense.

The six (6) inch sanitary sewer laterals servicing the Property and each of the individual Lots as shown on the Plat shall be private and shall be maintained by the Association. The maintenance cost and expense shall be considered a part of the Common Expense.

The water lines and storm sewer lines as shown on the Plat shall be owned and maintained by the Association. The maintenance cost and expense shall be a Common Expense.

3.11 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of the Common Areas may delegate his right and easement to a Resident, including, but not limited to, his tenants, contract purchasers or subtenants who reside in his Lot, subject to reasonable regulation by the Board. Any such delegation must be in writing and delivered to the Board.

3.12 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, or effect the release of his Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Areas or by abandoning his Residence.

3.13 Damage by Member. To the extent permitted by Indiana law, each Member shall be liable to the Association for any damage to the Common Areas not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Member, Resident or Guest, or any other Persons deriving their right and easement of use and enjoyment of the Common Areas from the Member, or his or their respective Family and Guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as defined in this Declaration and provided for in the Bylaws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Person for whom the Member may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint Owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damages, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against such Member's Lot, and may be enforced as provided herein.

ARTICLE IV Architectural Review Committee

4.1 Members of ARC. The ARC shall be comprised of three (3) members, the number of which may be increased by a majority vote of the Board. The initial members of the ARC shall be representatives of Declarant until three (3) years after the first Closing of the sale of a Lot

("Third Anniversary"). After the Third Anniversary the Board may appoint and remove one (1) member of the ARC, and Declarant shall have the right and power at all times to appoint and remove a majority of the members of the ARC or to fill any vacancy of such majority, until the expiration of the Development Period, after which the Board shall have the power to appoint and remove all of the members of the ARC. The Declarant may voluntarily surrender the right to appoint and release members of the ARC before termination of the above referenced time period. In that event, the Declarant may require, for the duration of the period, that specified actions of the ARC be approved by the Declarant before they become effective. ARC members appointed by the Board shall be from the Membership of the Association, but ARC members appointed by Declarant need not be Members of the Association. The ARC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Property. Board members may also serve as ARC members.

4.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the ARC. No construction, alteration, removal, location, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of an Improvement, including landscaping, in the Property, including the Limited Common Areas and Exclusive Use Areas appurtenant to a Lot, shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ARC and approved in writing by the ARC; provided, however, that any Improvement may be repainted without ARC approval so long as the Improvement is repainted the identical color which it was last painted. This provision applies to any Improvement, including furniture or furnishings, located on the exterior of the Lot or on or within the Limited Common Areas or Exclusive Use Area appurtenant to said Lot.

It shall be the responsibility of the Owner to submit the written plans and specifications (the "Applicant") to an authorized agent of the ARC. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that the installation, construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Declarant, and any Person to which Declarant may assign all or a portion of its exemption hereunder, need not seek or obtain ARC approval of any Improvements constructed on the Property by Declarant or such Person, as the case may be.

The ARC may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Property as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to complete the proposed work within a stated period of time, or (4) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. All plans and specifications for any construction or other Improvement (other than walls, fences, curbs, asphalt or cement areas, landscaping and non-structural alterations, modifications or additions) shall be prepared by a designer or licensed architect and shall include a site development plan showing existing and proposed topographic elevations, the pattern of surface water drainage on and over the Lot, proposed construction staging areas, the location of the Improvements on the Lot (including proposed front, rear and side setback lines, relationship to other Improvements, the location thereof with reference to structures on adjoining Lots, the number and location of all driveways on the Lot and all exterior trash container areas to be utilized by the Residents on the Lot); a building floor plan; a building elevation and roof plan showing dimensions, exterior color scheme and specification of the principal exterior materials for all outside walls and the roof of the structure; a detailed landscape and exterior lighting plan, which shall include designation of the number, location, type, size and maturity level of all landscaping to be placed on the Lot; and a detailed description of the location of all utility lines and connections, as may be applicable to the proposed construction or Improvement.

Notwithstanding the foregoing provisions of this Section, Improvements which are damaged or destroyed may be repaired, restored, replaced and/or reconstructed in conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Board or obtaining the Board's approval.

Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans submitted for approval. Decisions of the ARC and the reasons therefor shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval within sixty (60) days after receipt by the ARC of all materials required by the ARC. Any application submitted pursuant to this Section 4.2 shall be deemed approved unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by the ARC of all required materials. The Applicant shall meet any review or permit requirements of the "ARC" and the City or County prior to making any alterations or Improvements permitted hereunder.

4.3 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The Board may from time to time, by resolution unanimously

adopted in writing, designate a ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 4.8. In the absence of such designation, the vote or written consent of a majority of the ARC shall constitute an act of the ARC.

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

4.5 Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

4.6 Inspection of Work. The ARC or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Article IV ("Work"), which right to inspect shall include the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the ARC-approved plans for the work or with the requirements of this Declaration ("Noncompliance").

(a) Time Limit. The ARC's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the latest to occur of the following events: (i) submittal of the plans for the Work to the ARC for its approval as provided in this Article IV; (ii) completion of the Work as provided in the ARC-approved plans; and (iii) written notice from the Owner to the ARC that the Work has been completed. This time limit for inspection and notification by the ARC shall be extended indefinitely if any of these conditions has not occurred. If the ARC fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(b) Remedy. If an Owner fails to remedy any Noncompliance within thirty (30) days from the date of notification from the ARC, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

4.7 Scope of Review. The ARC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the considerations set forth in this Article IV, and the ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The ARC may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, Declarant does not warrant any protected views within the Property and no Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

4.8 Variances. The ARC may recommend and the Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon Recordation. After Declarant has lost the right to appoint a majority of the members of the ARC, the Board must approve any variance recommended by the ARC before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Residence.

4.9 Appeals. For so long as Declarant has the right to appoint and remove a majority of the members of the ARC, decisions of the ARC shall be final, and there shall be no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the members of the ARC the Board may, at its discretion, adopt policies and procedures for the appeal of ARC decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and in the absence of Board adoption of appeal procedures, all decisions of the ARC shall be final.

ARTICLE V

Association Maintenance Funds and Assessments

5.1 Personal Obligation of Assessments. Declarant, on behalf of itself and all future Owners, hereby covenants and agrees to pay, and each Owner by accepting title to a Lot or any interest therein, whether or not it shall be expressed in the deed or other instrument conveying

title, shall be deemed to covenant and agree to pay to the Association, Annual Assessments and other amounts as required or provided for in this Declaration. Amounts payable for Annual Assessments and Special Assessments (as generally defined in Sections 5.5 and 5.7, respectively) are generally referred to herein as "Assessments." Other amounts payable by an Owner to the Association, (or payable with respect to an Owner's Lot), including late charges, fines, penalties, interest, attorneys fees and other costs and expenses incurred by the Association in collecting unpaid amounts shall be added to the Annual or Special Assessments, charged to his Lot and shall be enforceable and collectible as Annual or Special Assessments. Assessments shall be used exclusively to promote the health, safety, recreation and welfare of Owners and Residents, to fulfill the covenants and obligations of Owners as set forth in Article III, to exercise the powers, rights and duties of the Association as set forth herein, and for such other purposes as may be expressly provided for in this Declaration

Subject to the provisions hereof, the Board shall have the power and authority to determine all matters in connection with Annual or Special Assessments, including, without limitation, power and authority to determine where, when and how Assessments shall be paid to the Association, and each Owner shall comply with all such determinations.

5.2 Maintenance Funds of Association The Board shall establish no fewer than two (2) separate Association Maintenance Funds, into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution, in federally insured accounts, and shall include: (1) an Operating Fund for current Common Expenses of the Association, (2) an adequate Reserve Fund for capital improvements, replacements, painting and repairs of the Common Areas (which cannot normally be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for policies of insurance which the Association obtains as provided in Section 9.1 hereof, and (3) any other funds which the Board may establish to the extent necessary under the provisions of this Declaration. The Board shall establish a Capitalization Account which shall consist of at least fifty percent (50%) of the capital contributions made by Owners pursuant to Section 5.12 hereof. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Declaration.

5.3 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, for the operation, replacement, improvement and maintenance of the Common Areas, and to discharge any other obligations of the Association under this Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by

the Board only for the purposes specified in this Article V. Nothing in this Declaration shall be construed in such a way as to permit the use of Association assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

5.4 Adoption of Budget.

(a) Initial Year of Operations. The Annual Assessment per Lot for the first Fiscal Year of the Association shall be as set forth in the initial Budget adopted by the Board. If during the first Fiscal Year of the Association the Board determines that the Annual Assessment should be increased, the Board shall provide a summary of the increased Budget to all Owners and shall call a meeting of the Members to consider ratification of the increased Budget. The date of such meeting shall be not less than fourteen (14) nor more than thirty (30) days after the date of mailing of the increased Budget summary. Unless Members controlling a majority of the voting power of the Association reject the increase, the increase shall be deemed ratified, whether or not a quorum is present at said meeting.

(b) Subsequent Fiscal Years. The Board shall annually adopt, at least sixty (60) days prior to the expiration of the current Fiscal Year, a proposed Budget for the Property for the upcoming Fiscal Year. Within thirty (30) days after such adoption, the Board shall provide a summary of the Budget to all Owners and shall call a meeting of the Members to consider ratification of the Budget. The date of such meeting shall be not less than fourteen (14) nor more than thirty (30) days after the date of mailing of the Budget summary. Unless Members controlling a majority of the voting power of the Association reject the budget, the Budget shall be deemed ratified, whether or not a quorum is present at said meeting. If the Budget is rejected, then the Budget last ratified shall be continued until such time as a new proposed Budget is ratified. If during such upcoming Fiscal Year the Board determines that the Annual Assessment should be increased above the amount reflected in the Budget then in effect for such Fiscal Year, the Board shall provide a summary of the increased Budget to all Owners and the provisions set forth above concerning a meeting of the Owners to ratify a new Budget shall be applicable to such proposed increase.

5.5 Annual Assessments/Commencement-Collection. Annual Assessments, and any monthly installment related thereto, shall commence on the first day of the first calendar month following the Closing of the sale of the first Lot. Thereafter, the Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

All Annual Assessments shall be assessed equally against the Members and their Lots based upon the number of Lots owned by each Member. Annual Assessments for fractions of any month involved shall be prorated. Subject to the terms of any subsidy contract, Declarant

shall pay to the Association until the Applicable Date, an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Article V and the aggregate amount of the Annual Assessments collected by the Association. From time to time the Board may determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Property, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members, subject to the right of any creditors of the Association.

Each installment of Annual Assessments may be paid by the Member to the Association in one check or in separate checks as payments attributable to deposits into specified Association Maintenance Funds. If any installment of an Annual Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Member shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

5.6 First Annual Assessment and Maximum Annual Increases.

(a) First Annual Assessment. The initial Annual Assessment for the fiscal year in which Assessments first commence shall be calculated as determined from the Budget. The Board shall estimate and prepare a Budget for the costs and expenses to be incurred by the Association during the first Fiscal Year, as is more fully set forth in Section 5.4 of this Declaration. All costs and expenses incurred (i) in fulfilling the financial obligations of the Association prior to the first Fiscal Year or (ii) ordinarily and necessarily by the Association in excess of Assessment installments to be paid during that first partial fiscal year shall be the responsibility of Declarant, and Declarant hereby covenants to bear and to pay or otherwise satisfy such financial obligations.

5.7 Special Assessments. In addition to Annual Assessments, the Association may levy Special Assessments, at such frequency and in such amounts as established by the Board, payable over the period of an Association Fiscal Year (i) for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, maintenance, repair or replacement provided for or required pursuant to Article II; (ii) for the purpose of defraying any other expense incurred or to be incurred by the Association as provided in this Declaration; or (iii) to cover any deficiency in the event that, for whatever reasons, the amount received by the Association from Annual Assessments is less than the amount determined to be necessary and assessed by the Board. Special Assessments for these purposes may not be levied unless approved by Members holding a majority of the votes held by all Members. Otherwise, Special Assessments, as defined in Section 1.5, may be levied after Notice and Hearing as set forth in the Bylaws.

5.8 Time for Payments. Each installment of the Annual Assessment shall be due on the first day of the period covered by said installment. The amount of any Assessment, late charge,

fine, penalty or other amount payable by an Owner or Resident with respect to such Owner's Lot shall become due and payable as specified herein and if said payment is not received, then said Owner shall also be responsible for any late charges, interest, fines, penalties or attorneys fees related thereto. Unless paid, when due, any such amount shall bear interest at a rate specified by the Board but in no event greater than eighteen percent (18%) per annum from its original due date until date of payment. Annual Assessments shall be paid and collected on a quarterly basis or at such other frequency as may be adopted by the Board. Special Assessments shall be paid and collected pursuant to Section 5.7 hereof, as determined by the Board.

5.9 Delinquency. Any installment of an assessment provided for in this Declaration shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board of the Association. Upon such delinquency, the Board may choose to accelerate the Annual Assessment making the full amount of the Annual Assessment, not simply the delinquent installment, immediately due and payable. The Board shall assess a late charge for any delinquent payments in the amount of Twenty-five Dollars (\$25.00) for the first thirty (30) day period and an additional Twenty-five Dollars (\$25.00) for any subsequent thirty (30) day period. The Association may bring action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against the Owner's Lot, and there shall be added to the amount of such assessment all costs of such action, including the Association's attorney fees. In the event a judgment is obtained, such judgment shall include such interest, costs and attorney fees. The Association need not accept any tender of a partial payment of an installment of an assessment and all costs and attorneys fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

5.10 Creation and Release of Lien. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Lot from the time such sums become due prior and superior to all other liens and encumbrances thereon except (a) liens and encumbrances Recorded before Recordation of this Declaration; (b) a first Mortgage on the Lot Recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. The Association may enforce the lien after Recordation by the Board or its authorized agent of a Notice of Lien ("Notice of Lien") which states (i) the amount of the assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Lien, (ii) a sufficient description of the Lot against which the same has been assessed, and (iii) the name of the Owner thereof.

5.11 Enforcement of Liens. It shall be the duty of the Board to enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration or in any other matter permitted by law. The lien on a Lot may be enforced by sale of the Lot by the Association, the Association's attorneys, or in any other manner permitted by law, after failure of the Owner to pay any Annual or Special Assessment, or installments thereof, as well as any charges, penalties, fines, late charges, interest or attorneys fees as provided herein. The sale shall be conducted in accordance with the provisions of Indiana law. The Association, through its agents, shall have the power to enter a bid on the Lot at the

foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, charges, penalties, fines, late charges, interest or attorneys fees, shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this section may include reasonable attorneys' fees as fixed by the court.

5.12 Initial Capital Contributions to the Association. At the closing of the purchase of a Lot from Declarant, each Owner of a Lot shall contribute to the capital of the Association, an amount equal to One Hundred Fifty Dollars (\$150.00). This amount shall be disbursed at the closing to the Association or to the Declarant if Declarant has previously advanced such funds to the Association. For purposes of this Declaration, Arbor shall not be considered an Owner.

ARTICLE VI Property Easements and Rights of Entry

6.1 Easements.

(a) Access. Declarant expressly reserves for the benefit of the Owners reciprocal, nonexclusive easements for access, ingress and egress over all of the Common Areas, including the entry gates, if any, on the Property, as defined in this Declaration. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by all Owners or Residents and their Families or Guests residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Lot in the Property.

(b) Maintenance and Repair. Declarant expressly reserves for the benefit of the Board and all agents, officers and employees of the Association, nonexclusive easements over the Common Areas as necessary to maintain and repair the Common Areas, and to perform all other tasks in accordance with the provisions of this Declaration. Declarant also expressly reserves for the benefit of the Board and all agents, officers and employees of the Association, nonexclusive easements over the Limited Common Areas and Exclusive Use Areas for the limited purposes stated in this Declaration. Such easements over the Common Areas, the Limited Common Areas and Exclusive Use Areas shall be appurtenant to, binding upon, and shall pass with the title to, every Lot conveyed.

(c) Limited Common Areas and Exclusive Use Areas. Declarant expressly reserves for the benefit of Owners and their Lots, exclusive easements over the Limited Common Areas and Exclusive Use Areas. The rights of exclusive use and enjoyment of the Limited Common Areas and Exclusive Use Areas reserved to the Owners are limited by Section 3.7 hereof. Owners shall not be entitled to transfer their interests in the

Limited Common Areas or Exclusive Use Areas appurtenant to their Lot, in the absence of the conveyance of said Lot.

(d) Utility Easements. Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and disposal of the Property. Such right of Declarant shall expire upon the closing of the sale of the last Lot within the Property by Declarant.

(e) Common Area Lighting and Photoelectric Cells. Declarant expressly reserves for the benefit of the Board and all agents, officers and employees of the Association, nonexclusive easements over, in and upon each Lot, Limited Common Area and Exclusive Use Area for the purpose of maintaining and repairing any light fixtures, wiring, conduit or electrical meter, related to the Common Area lighting and photoelectric cells, which may be located on or within a Lot. In the absence of an emergency, the Association shall give the Owner of the Lot 48 hours written notice prior to entering the Lot, Limited Common Area or Exclusive Use Area for the purpose of maintaining or repairing said light fixtures, wiring, conduit or electrical meter.

(f) Encroachments. Declarant, the Association and Owners of adjoining Lots shall have a reciprocal easement appurtenant to each of the Lots over the Residence and the Common Areas for the purpose of (1) accommodating any existing encroachment of any wall of any Improvement, and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the Improvements or any other portion of the Property housing their respective Residences. Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Common Areas are specifically reserved for the benefit of the Owners. Declarant expressly reserves for the benefit of the Common Areas, and for the benefit of the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and upon the Common Areas. The foregoing easements shall not unreasonably interfere with each Owner's use and enjoyment of adjoining Lots. No portion of the Common Areas, including any amenities contemplated as a part of the Property, are proposed to be leased by Declarant to the Owners or to the Association.

(g) Completion of Improvements. Declarant expressly reserves for its benefit the right and easement to enter the Property to complete any Improvement which Declarant deems desirable to implement Declarant's development plan.

6.2 Rights of Entry.

(a) Association Right of Entry. The Association shall have a limited right of entry in and upon the Limited Common Areas and Exclusive Use Areas for the purpose of inspecting the Property, and taking whatever corrective action may be deemed necessary

or proper by the Board, consistent with the provisions of this Declaration. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Owners or Residents. Nothing in this Article VI shall in any manner limit the right of the Owner to exclusive occupancy and control over his Lot. However, an Owner shall permit a right of entry to the Association or any other person authorized by the Association as required by this Section 6.2. Any damage caused to a Residence by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense of the Association.

(b) Owners or Residents Right of Entry. The Owners or Residents of a Lot within the Association shall have a limited right of entry on and upon the Residence of another Owner for the purpose of taking whatever corrective action may be deemed necessary or proper consistent with the terms of this Declaration. Nothing in this Article VI shall in any manner limit the right of the Owner to exclusive occupancy and control over his Lot. However, an Owner shall permit a right of entry to another Owner, or any other person authorized by the other Owner, as required by this Section 6.2. Any damage caused to a Residence by such entry by the other Owner or by any person authorized by the other Owner shall be repaired at that Owner's expense.

ARTICLE VII Declarant's Rights and Reservations

Nothing in the Restrictions shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete Improvements to and on the Common Areas or any portion of the Property owned solely or partially by Declarant. Any material alteration of Declarant's construction plans shall require the prior approval of all Owners, if such alteration is inconsistent with the general plan of development for the Property.

The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of the Lots by sale, resale, lease or otherwise.

Each Owner by accepting a deed to a Lot hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot in the Property by a purchaser from Declarant to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property.

Declarant may use any Lots owned or leased by Declarant in the Property as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain ARC approval of any Improvement constructed or placed on any portion of the Property by Declarant.

The rights of Declarant hereunder and elsewhere in these Restrictions may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of the deed to its Lot, an irrevocable, special power of attorney to Declarant to execute and Record all documents and Plats necessary to allow Declarant to exercise its rights under this Article.

Declarant and its prospective purchasers of Lots shall be entitled to the nonexclusive use of the Common Areas without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers, to dispose of the Property as provided herein, and to develop and sell the Property. For so long as Declarant owns any Lots or Property or is otherwise fulfilling its duties or obligations under this Declaration, Declarant, shall also be entitled to the nonexclusive use of any portions of the Property which comprise streets, drives, walkways and entry gates for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The use of the Common Areas by Declarant shall not unreasonably interfere with the use thereof by the other Members.

The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Declarant's rights and reservations set forth in this Article VII shall terminate upon the expiration of the Development Period, but in no event later than on the sixth (6th) anniversary of the first Closing of the sale of a Lot within the Property.

ARTICLE VIII Residence and Use Restrictions

All of the Property shall be held, used and enjoyed subject to the following limitations and restrictions and the exemptions of Declarant set forth in this Declaration.

8.1 Single Family Residences. Each Lot shall be used as a Residence for a single Family and for no other purpose. An Owner may lease his Lot to a single Family provided that the Lot is rented pursuant to a lease agreement which is (a) in writing, (b) for a term of at least one year, and (c) subject to all of the provisions of the Restrictions. A copy of each lease must be delivered to the Board within thirty (30) days of execution of the lease. The Board may adopt a reasonable charge or fee to be assessed against each Owner for each new tenant registered with the Association. A Residence may be leased only in its entirety. No fraction or portion of a Residence may be leased. There shall be no subleasing of Residences or assignment of leases unless prior written approval is obtained from the Board.

8.2 Parking and Vehicular Restrictions. No Owner shall park, store or keep within the Property any inoperable, unlicensed or unregistered vehicle, unless said inoperable, unlicensed, or unregistered vehicle can be stored in the garage of the Lot, nor any commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, delivery truck, semi-tractor trailer or tractor trailer cab).

There is no recreational vehicle parking area. Thus, no Owner shall park, store or keep within the Property, any recreational vehicle (including, but not limited to, any camper Lot, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home (the "Recreational Vehicle"); unless the Recreational Vehicle is stored in the garage of the Lot. The definition of Recreational Vehicles excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board.

Inasmuch as the Owners share a common driveway, which is a Common Area, no vehicle, of any kind or type, may be parked in the driveway, other than for immediate loading or unloading of said vehicle. An Owner of a Lot is responsible for notifying any Family member or Guest of this provision and any such violation will be enforced against the Owner whose Family or Guests violate this provision. Additional parking has been provided throughout the Property and Guests shall be permitted to park in those designated areas. In addition, no moving vans, delivery trucks, service vehicles or other large vehicle or truck are permitted on the Common Area driveways. Any damage to the driveway due to an Owner's, or his agent's, Family's or Guest's, violation of this provision shall be assessed against the Owner and treated as a Special Assessment as set forth in Article V hereof.

In addition, no Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. The Board shall have the power to enforce all parking and vehicle use restrictions applicable to the Property, including the power to remove violating vehicles from any of the Property to the extent permitted by applicable law. If the Board fails to enforce any of the parking or vehicle use regulations, the City may, but need not, enforce such regulations in accordance with state and local laws and ordinances.

8.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Property, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Residence so as to be offensive or detrimental to any other Residence in the Property or to its occupants. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Owners or Residents or their Guests shall be located, used or placed on any portion of the Property without the prior written approval of the Board. Alarm devices used exclusively to protect the security of a Lot and its contents shall be

permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

8.4 Signs No sign, poster, billboard, advertising device or other display of any kind shall be displayed at a Residence or in the Common Areas, without the prior approval of the ARC, except the Owner or Resident may place one (1) customary 18" x 24" for sale or for lease sign on or in the Lot. Any other signage shall require Board approval. Nothing herein contained shall restrict the right of Declarant to place and the Association to maintain street signs, property monument signs and other property sale signs in the Common Areas.

8.5 Antennae, Satellite Dishes. No antennae, satellite dishes or other device for the transmission or reception of television signals or any other form of electromagnetic radiation or satellite reception shall be roof mounted other than a satellite dish no greater than eighteen (18) inches in diameter.

Subject to the foregoing, installation of such devices which shall be ground mounted and shall be permitted only when erected, used or maintained in the rear yard of a Residence and the height of said device will not exceed eight feet overall (including but not limited to, the stand, pedestal, and receiver) and/or shall not be more than two feet above the height of the lowest point of the rear property wall of the Residence. Adequate landscape material shall be installed and continually maintained to reasonably screen said device from view of Residences within the Property, as well as from view of any public or private streets. The ARC may, but shall not be required to, establish rules, regulations, or other criteria for the installation of a device, structure or fixture as defined herein.

These minimum standards are given by way of illustration only and do not remove the Owner's obligation to submit a request for approval to the ARC or restrict the ARC or the Board from adopting other similar or related standards as conditions to approval, including but not limited to visual impact, color and harmony with existing construction.

8.6 Solar Panels. No solar panel or other solar energy device may be installed or constructed on any Residence, unless the Owner has complied with the architectural review requirements, set forth in Article IV of this Declaration, and received the prior written approval of the ARC.

8.7 Unsightly Articles No unsightly articles, including clotheslines, shall be permitted to remain on any Lot, or within any Residence, so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles designed therefor, such that they do not create a fire hazard and except as specifically authorized in writing by the Association (and subject to applicable ordinances and fire regulations).

8.8 Trash Containers. All garbage containers, whether obtained by the Declarant, Association or Owner, must have a secure top lid and be placed on the pads, provided by the

Declarant, for pick up. All garbage containers must be removed from the Common Areas within 12 hours of trash pick up. All garbage containers must be stored within the garage or Limited Common Area, so as not to be visible from the streets

8.9 Exclusive Use Areas. Selected Lots shall have an entry area which is designated as an Exclusive Use Area. Any improvement to the Exclusive Use Area is subject to Article IV of this Declaration and must be approved by the ARC, prior to installation.

8.10 Animals. No animals, fowls, reptiles, poultry, fish or insects of any kind ("animals") shall be raised, bred or kept within the Property, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of the Restrictions and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration, "a reasonable number" shall ordinarily mean two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners in the Property. Animals belonging to Owners, Residents, or their Guests within the Property must be either kept within an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, Residents, their Families and Guests, for any noise or any nuisance or damage to person or property caused by any animals brought or kept upon the Property by an Owner or Resident or by members of their Family or Guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Areas.

8.11 Business or Commercial Activity. No part of the Property shall ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; except Declarant, may use any portion of the Property for a model home site and display and sales offices in accordance with Article VII hereof. The provisions of this Section 8.11 shall not preclude any of the above-described activities without external evidence thereof provided that all of the following conditions are fulfilled: (a) such activities are conducted in conformance with all applicable governmental ordinances, (b) the patrons or clientele of such activities do not visit the Lot or park automobiles or other vehicles within the Property; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Lot; (d) no such activity increases the liability or casualty insurance obligation or premium of the Association, and (e) such activities are consistent with the residential character of the Property and conform with the provisions of this Declaration.

Nothing contained herein is intended to restrict the Declarant in the construction, sale or advertising of homes. The Declarant may in its sole discretion construct, sell, and conduct related businesses upon the Property for a period up to and including six (6) years after the first Lot is conveyed to an Owner other than Declarant.

8.12 No Further Subdivision. No Lot may be further subdivided. Nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for: (1) selling a Lot; or (2) transferring or selling any Lot to more than one (1) person to be held by them as tenants in common, joint tenants, tenants by the entirety, or (3) the leasing or renting by any Owner of all of his Lot, provided that any such lease or rental shall be subject to the Restrictions and consistent with Section 8.1 hereof.

8.13 Drainage. There shall be no interference with the established drainage in the Property, including the back yard, unless an adequate alternative provision, previously approved in writing by the ARC, is made for proper drainage. For the purpose hereof, "established drainage" is defined as the drainage which exists at the time a Lot is conveyed to an Owner by Declarant or later grading changes which are shown on plans approved by the ARC.

8.14 View Obstructions. No vegetation, Improvement or other obstruction shall be planted, constructed, or maintained on any Lot, or within any Residence, in such location or of such height as to unreasonably obstruct the view from any other Residence. Each Owner or Resident of a Lot shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on that portion of his Residence which is subject to his control or maintenance, so as to not unreasonably obstruct the view of other Owners or Residents. If an Owner or Resident fails to perform necessary trimming, pruning or thinning, the Association shall have the right, after Notice and Hearing, to enter upon such Residence for purposes of performing such work. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

8.15 Lot Alterations. Subject to the provisions of Article IV of this Declaration and other provisions of law, each Owner shall have the right to modify its Residence at its sole cost and expense, so long as (a) such modifications do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Property; and (b) such modifications do not change the appearance of the exterior of a Lot or any other portion of the Property without the prior written approval of the ARC, as set forth in Article IV hereof.

8.16 Common Area Lighting and Photoelectric Cells. As part of the original construction of the Property, Declarant may install certain lighting within the Common Areas, which are directed, connected or wired to the electrical meters at certain Lots. The lighting shall be in addition to the exterior lighting for each Lot. The Association shall be responsible for maintaining and repairing any light fixtures, wiring, or conduit located on the Common Areas.

Each Owner whose electrical meter is directly connected with or wired to a Common Area light, shall not interfere with the electrical wiring or power source located on the light or at the Lot. Consistent with this provision, no Owner shall turn off the power to the Residence, except for immediate and emergency repair situations.

8.17 Animal Kennels. No outdoor animal kennels or runs may be installed or constructed on any Lot or Residence.

8.18 Outbuildings / Pools. No outbuildings or above ground pools (swimming, wading or otherwise) shall be install or constructed on any Lot or Residence.

ARTICLE IX Insurance

9.1 Duty to Obtain Insurance; Types.

(a) Public Liability. Not later than the time of the first conveyance of a Lot to a person other than a Declarant, the Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments and not less than \$1 million covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising out of or in connection with the use, Ownership or maintenance of the Common Areas.

(b) Fire and Casualty Insurance. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Areas. Each Owner shall be solely responsible for any fire and casualty insurance, and the payment of any premiums therefor, for coverage of any Residence, as well as any Improvements therein or thereon.

(c) Fidelity Bonds. After commencement of Annual Assessments, pursuant to Article V of this Declaration, fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Lots in the Property, plus reserve funds.

(d) Other Insurance. The Board shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's

compensation, and such other risks as shall customarily be covered with respect to common-interest community projects similar in construction, location and use

(e) Beneficiaries. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

9.2 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

9.3 Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide insurance on his Residence, as defined in Section 1.33 hereof, and any Improvement located thereon, as well as any personal property. Nothing herein shall preclude any Owner or Resident from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring inside his Residence or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

9.4 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant, and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer.

9.5 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the Annual Assessments levied by the Association and collected from the Owners. That portion of the Annual Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

9.6 Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 of this Article shall be paid to the Board as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided

herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article X of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 10.4 of this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

9.7 Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the first Mortgages held by first Mortgagees who have filed requests under Section 9.4. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

9.8 Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 9.1 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Areas, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

9.9 Required Waiver. All policies of physical damage and liability insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Owners and tenants of the Owners;
- (b) any defense based upon coinsurance;
- (c) any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

(e) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

(f) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; and

(g) any right to require any assignment of any Mortgage to the insurer.

ARTICLE X Destruction of Improvements

10.1 Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article IX hereof for reconstruction or repair of the Common Areas shall be used for such purpose, unless (a) redevelopment of the Property is terminated, in which case Section 12.2(b) of this Declaration shall apply; (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or (c) eighty percent (80%) of the Owners' vote not to rebuild. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Areas shall be reconstructed or rebuilt substantially in accordance with the applicable Plat and the original construction plans if they are available, unless changes recommended by the ARC have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of first Mortgages upon the Lots. A Special Assessment shall be levied by the Board to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the entire Property is not repaired or replaced, then the proceeds attributable to the damaged Common Areas must be used to restore the damaged area to a condition compatible with the remainder of the Property, and (a) any proceeds attributable to Lots, and Limited Common Areas or Exclusive Use Areas appurtenant to any Lot, that are not rebuilt, shall be distributed to the Owners of those Lots and the Lots to which those Limited Common Areas or Exclusive Use Areas were allocated; provided, however, that such proceeds shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority, and (b) the remainder of the proceeds shall be distributed to the Owners holding an interest in such Common Areas in proportion to the interest held; provided, however, that such proceeds shall first be applied to the balance then due on any Mortgage encumbering such Owners' Lot, in order of priority.

10.2 Partition. No Owner shall have the right to a partition of its interest in the Lot and there shall be no judicial partition of the Property, or any part thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in any Lot.

10.3 Residence Damage. Restoration and repair of any damage to any individual Residence shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article X, such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the ARC as provided herein.

10.4 Notice to Owners and Listed Mortgagees. The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Areas, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of first Mortgages on Lots in the Property, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Lot, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Lot who has filed a written request for such notice with the Board.

ARTICLE XI Eminent Domain

11.1 Eminent Domain. The term "taking" as used in this Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Lot Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article XI.

11.2 Property Condemnation. If there is a taking of an interest in all or part of the Property such that the ownership, operation and use of the Property in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Owners of Lots (a) not taken, or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively, the "Remaining Lots") do not by affirmative vote of at least one-third of their voting power approve the continuation of the Property and the repair, restoration and replacement to the extent feasible of the Common Areas and the Remaining Lots, then the Board shall proceed with the sale of that portion of the Property which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.1 of this Declaration.

11.3 Condemnation of Common Areas. If there is a taking of all or any portion of the Common Areas, or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

11.4 Condemnation of Limited Common Areas and Exclusive Use Areas. If there is a taking of all or any portion of a Limited Common Area or Exclusive Use Area which is not taken in connection with the taking of all or any portion of the Lot to which it is appurtenant, the award

in condemnation shall be paid to the Owner of the Lot to which the taken Limited Common Area or Exclusive Use Area was appurtenant; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

11.5 Condemnation of Lots If there is a taking of a Lot, the award in condemnation shall be paid to the Owner of the Lot; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Lot, in order of priority.

11.6 Portions of Awards in Condemnation Not Compensatory for Value of Real Property. Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

ARTICLE XII Duration and Amendment

12.1 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date of Recordation hereof, after which the term shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 12.2 is Recorded. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the Membership in the Association, as long as this Declaration shall continue in full force and effect. The provisions of this Article are subject to the provisions of Articles X and XI of this Declaration.

12.2 Termination and Amendment.

(a) Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than sixty-seven percent (67%) of the voting power of the Association, provided that the specified percentage of the voting power of the Association necessary to amend a specified Section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision.

(b) Except in the case of a taking of all of the Lots by eminent domain, termination of this Declaration shall require approval by Members representing at least eighty percent (80%) of the Association's voting power. No such termination shall be effective unless it is also approved in advance either by fifty-one percent (51%) of the Mortgagees of the first Mortgages on all of the Lots in the Property (if said termination is proposed by reason of the substantial destruction or condemnation of the Property) or by

sixty-seven percent (67%) of such Mortgagees (if said termination is for reasons other than such substantial destruction or condemnation).

(c) Each Mortgagee of a first Mortgage on a Lot in the Property which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within twenty (20) days after the Mortgagee receives the notice.

(d) A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by two (2) officers of the Association that the requisite number of Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees shall include a certification that the requisite approval of such first Mortgagees has been obtained.

(e) Notwithstanding any other provisions of this Section 12.2, at any time prior to the first Closing of the sale of a Lot, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

12.3 By Declarant. Notwithstanding anything herein to the contrary, Declarant hereby reserves the right until the expiration of the Development Period to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, without the approval of any other person or entity, in order to bring Declarant into compliance with the requirements of any statute ordinance, regulation or order of any public agency having jurisdiction thereof, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. Each amendment to the Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the Association. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

12.4 Protection of Declarant. Until the sixth (6th) anniversary of the first Closing of the sale of a Lot in the Property, the prior written approval of Declarant, as developer of the Property, will be required before any amendment which would impair or diminish the rights of Declarant to complete the Property or sell or lease Lots therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of the Restrictions,

until the expiration of the Development Period, the Association shall not take any action to significantly reduce the Association maintenance or other services without the prior written approval of the Declarant.

ARTICLE XIII Streets

Each Owner, by the acceptance of a deed to a Lot in Falcon Run Village, acknowledges that the streets in Falcon Run Village are private streets and that the maintenance, repair and replacement of the streets are the responsibility of the Association, and not the City of Indianapolis, Indiana; and each Owner further agrees that by the acceptance of a deed to a Lot, he or she waives the right to request dedication of a street or streets in Falcon Run Village to the City of Indianapolis, Indiana.

ARTICLE XIV General Provisions

14.1 Enforcement of Restrictions.

(a) Violations Identified by the Association. If the Board determines that there is a violation of any provision of the Restrictions, or the ARC determines that an Improvement which is the maintenance responsibility of an Owner or Resident is in need of installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner or Resident identifying (i) the condition or violation complained of, and (ii) the length of time the Owner or Resident has to remedy the violation including, if applicable, the length of time the Owner has to submit plans for approval to the ARC and the length of time the Owner has to complete the work proposed in the plans submitted to the ARC.

If an Owner does not perform such corrective action as is required by the Board and the ARC within the allotted time, the Board, after Notice and Hearing, may undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. Such Special Assessment shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration.

If the violation involves nonpayment of any type of Assessment, or any fine or penalty imposed for noncompliance with the Restrictions, then the Board shall be entitled to collect such delinquent Assessment pursuant to the procedures set forth in Article V.

(b) Violations Identified by an Owner. In the event that an Owner or Resident alleges that another Owner or Resident, or his Guests, are violating the Restrictions (other than nonpayment of any type of Assessment), the Owner or Resident must first submit the matter to the Board pursuant to the Notice and Hearing procedure established in Article XII of the Bylaws before the complaining Owner or Resident may resort to a court of law for relief with respect to the alleged violation.

(c) Legal Proceedings. Failure to comply with any of the terms of the Restrictions by an Owner, Resident, or his or their Guests, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages or violation of the Restrictions, injunctive relief, foreclosure of any lien, or any combination thereof; provided, however, that the procedures established in Sections 14.1(a) and (b) above must first be followed, if they are applicable.

(d) Limitation on Expenditures. The Association shall not incur litigation expenses, including without limitation attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article VIII hereof, (ii) enforce the architectural control provisions contained in Article IV hereof, or (iii) collect any unpaid assessments, fines or penalties levied pursuant to this Declaration.

(e) Schedule of Fines. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner or Resident, or their Family or Guest, to comply with any provisions of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing. However, any fine or penalty imposed by the Association to obtain compliance with any of the Restrictions is a Special Assessment collectible and enforceable as all other Assessments, pursuant to Article V hereof.

(f) No Waiver. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof.

(g) Right to Enforce. The Board, any Owner (not at the time in default hereunder), or Declarant (prior to the expiration of the Development Period) shall be entitled to enforce the Restrictions as described in this Article. Each Owner shall have a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

(h) Attorneys Fees Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and costs of court.

14.2 Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

14.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential community and Lots and for the maintenance of Common Areas, and any violation of this Declaration shall be deemed to be a nuisance. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

14.4 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association 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 association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one (1) plan.

14.5 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

14.6 No Representations or Warranties. No representations or warranties of any kind, express or implied have been given or made by Declarant or its agents or employees in connection with the Property or any portion thereof, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a common-interest community, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with any governmental authority.

14.7 Nonliability and Indemnification

(a) General Limitation. Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the ARC by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the ARC, any member of the Board or of the ARC, or any other officer, employee or agent of the Association. Such Persons are subject to the insulation from liability provided for directors of corporations by the laws of the State of Indiana, if available. Members of the Board are not personally liable to the victims of crimes occurring on the Property.

(b) Indemnification. When liability is sought to be imposed on a member of the Board for actions undertaken in such Person's role as a member of the Board or ARC, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, unless and until it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board or ARC who so acted. Punitive damages may not be recovered against the Association, but may be recovered from Persons whose activity gave rise to the damages. This Section 14.7(b) shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

14.8 Notices. Except as otherwise provided in this Declaration, notice to be given to an Owner shall be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Lot. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

14.9 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

14.10 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does

hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

This Declaration is dated for identification purposes _____, 1999.

DECLARANT:

HERMAN ASSOCIATES, INC., an Indiana corporation

By: _____
Thomas E. Herman, President

STATE OF INDIANA)
)
COUNTY OF MARION)

On this _____ day of _____, 1999, personally appeared before me, a notary public, Thomas E. Herman, the President of Herman Associates, Inc., personally known (or proved) to me to be the person whose name is subscribed to the above instrument and acknowledged to me that he executed the above instrument.

WITNESS my hand and official seal.

, Notary Public

My Commission Expires:

County of Residence:

EXHIBIT "A"

LEGAL DESCRIPTION

That certain real property located in the County of Marion, State of Indiana, more particularly described as follows:

EXHIBIT "B"

EASEMENTS, COMMON AREAS, LIMITED COMMON
AREAS AND EXCLUSIVE USE AREAS

EXHIBIT "C"

PLAT



HERMAN
ASSOCIATES, INC.

Residential Builders & Developers

May 30, 2000

Via fax: 571-0700

Mr. Steve Backer
Backer & Backer
8710 North Meridian Street
Indianapolis, IN 46240

RE: Amendment Request

Dear Mr. Backer:

I spoke with Janice Wilson from the Assessor's Office today. She stated that the covenants for Falcon Run Village needed to be amended, as there is contradiction in defining "common areas."

Ms. Wilson stated that you amended the covenants for Arbor Village back in November 1999. She is requesting that the same amendment be recorded for Falcon Run Village, which clearly defines the "common areas" in all references throughout the document. If you need more specific information, you may contact Ms. Wilson at 327-3920.

Thank you for your assistance.

Sincerely,
HERMAN ASSOCIATES, INC.

Lisa McNabb
Administrative Assistant