

THIS DECLARATION IS A RERECORDING OF THE DECLARATION RECORDED 07/6
2/2/05 as INSTRUMENT NO. 200500002832 to CORRECT THE LEGAL DESCRIPTION
FOUND AT EXHIBIT A.

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
BEACON POINTE**

200500005214
Filed for Record in
HENRICKS COUNTY IN
THERESA D LYNCH
02-25-2005 At 01:33 PM.
COVENANTS 68.00

Declaration of Covenants CLEAN

2913

68

TABLE OF CONTENTS

Recitals: 1

Terms: 1

1. Definitions 1

 A. Assessment 1

 B. Applicable Date 2

 C. ARC 2

 D. Association 2

 E. Board 2

 F. Common Area(s) 2

 G. Common Expenses 2

 H. Development Period 2

 I. Improvements 2

 J. Interest 2

 K. Lake or Lakes 2

 L. Landscape Easement 2

 M. Lot or Lots 3

 N. Member 3

 O. Owner 3

 P. Plat 3

 Q. Property 3

 R. Quorum 3

 S. Residence 3

 T. Resident 3

2. Organization and Duties of Association 3

 A. Organization of Association 3

 i. Membership 3

 ii. Transfer 4

 iii. Voting 4

 a. Class A 4

 b. Class B 4

 iv. Suspension of Voting Rights 5

 v. Board of Directors 5

 vi. Proxies 5

 vii. Actions 5

 B. General Duties of the Association 5

 C. Amendment of Declaration 6

 D. Insurance 6

 E. Condemnation, Destruction 6

 F. Mortgagee's Rights 7

3. Architectural Review Committee 7

 A. Members of ARC 7

 B. Review of Plans and Specifications 7

 C. Meetings of the ARC 9

 D. No Waiver of Future Approvals 9

 E. Compensation of Members 9

F.	<u>Inspection of Work</u>	9
	(i) <u>Time Limit</u>	10
	(ii) <u>Remedy</u>	10
G.	<u>Scope of Review</u>	10
H.	<u>Variances</u>	10
I.	<u>Appeals</u>	11
4.	<u>Remedies</u>	11
A.	<u>In General</u>	11
B.	<u>Delay or Failure to Enforce</u>	11
5.	<u>Covenants for Maintenance Assessments</u>	11
A.	<u>Purpose of Assessments</u>	11
B.	<u>Liability for Assessment</u>	12
C.	<u>Pro-rata Share</u>	12
D.	<u>Basis of Annual Assessments</u>	12
E.	<u>Basis of Special Assessments</u>	12
F.	<u>Fiscal Year; Date of Commencement of Assessments; Due Dates</u>	12
G.	<u>Start-Up Fund</u>	13
H.	<u>Duties of the Association</u>	13
I.	<u>Non-payment of Assessments, Remedies of Association</u>	14
J.	<u>Adjustments</u>	14
6.	<u>Effect of Becoming an Owner</u>	14
7.	<u>Control of the Common Areas</u>	15
A.	<u>Control by the Board</u>	15
B.	<u>Conditions</u>	15
8.	<u>The Lakes</u>	15
9.	<u>Restrictions, Covenants and Regulations</u>	15
A.	<u>Restrictions on Use</u>	15
i.	<u>Use of Common Areas</u>	16
ii.	<u>Nuisance</u>	16
iii.	<u>Setback Lines</u>	16
iv.	<u>Utility Easements and Drainage</u>	17
v.	<u>Land Use and Building Type</u>	17
vi.	<u>Building Location</u>	17
vii.	<u>Pools</u>	17
viii.	<u>Temporary and Outbuilding Structures</u>	17
ix.	<u>Livestock and Poultry</u>	17
x.	<u>Garbage and Refuse Disposal</u>	18
xi.	<u>Fences</u>	18
xii.	<u>Signs</u>	18
xiii.	<u>Satellite Dishes/Antennae</u>	18
xiv.	<u>Parking and Prohibited Vehicles</u>	18
a.	<u>Parking</u>	18
b.	<u>Prohibited Vehicles</u>	18
xv.	<u>Sight Distance</u>	19
B.	<u>Declarant's Rights</u>	19
C.	<u>Non-applicability to Association</u>	19
10.	<u>Duration</u>	19

11. <u>Amendment of Declaration</u>	20
A. <u>Generally</u>	20
i. <u>Notice</u>	20
ii. <u>Resolution</u>	20
iii. <u>Meeting</u>	20
iv. <u>Adoption</u>	20
v. <u>Special Amendments</u>	20
vi. <u>Recording</u>	20
B. <u>Amendments by Developer Alone</u>	20
C. <u>Protection of Declarant</u>	21
12. <u>Severability</u>	21
13. <u>Notices</u>	21
14. <u>Withdrawal, Addition of Property</u>	22
15. <u>Costs and Attorney Fees</u>	22
16. <u>Rules and Regulations</u>	22

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BEACON POINTE**

THIS DECLARATION, dated February 10, 2005, is by **BEACON POINTE, LLC**, an Indiana limited liability company ("Developer") and **ARBOR HOMES, LLC** ("Arbor").

Recitals:

A. Developer and Arbor is the purchaser and owner of all of the lands described on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided for development of Phase I of Beacon Pointe, a single family housing development in Hendricks County, Indiana (the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Hendricks County, Indiana (the "Plats").

B. Developer has conveyed 3 lots to Arbor and is about to sell and convey to Arbor the remaining residential lots situated within the platted areas of Phase I of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of Phase I of the Development mutual and beneficial restrictions, covenants, conditions and charges contained herein and as set forth in the Plats (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof.

C. Developer has the right to acquire and convey to Arbor additional land for Phase II and upon acquisition, will add such real estate to the terms of this Declaration.

Terms:

NOW, THEREFORE, Developer and Arbor hereby declare that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and Arbor and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of the successors of Developer and Arbor in title to any real estate in the Development. Developer specifically reserves unto itself the right and privilege to exclude any real estate from the Development, or to include additional real estate in the Development including real estate adjacent to the Development.

1. **Definitions.** The following are the definitions of the terms as they are used in this Declaration:

A. "Assessment" shall mean the share of the Common Expenses imposed on

each Lot or other special assessments, as determined and levied pursuant to the provisions of Section 5 hereof.

B. "Applicable Date" shall mean the date upon which the Class B membership in the Association shall cease and terminate as provided in Section 2A (iii)(b) herein.

C. "ARC" shall mean the Architectural Review Committee as provided in Section 3 herein.

D. "Association" shall mean the Beacon Pointe Homeowners' Association, Inc., an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

E. "Board" shall mean the Board of Directors of the Association.

F. "Common Area(s)" shall mean those areas and all improvements located thereon set aside for recreation areas, and related facilities, theme structures or landscaped areas or mounds at street entrances, lights, park areas, street landscaping, the Lakes, and any other areas so designated on the Plats.

G. "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association, including but not limited to real estate taxes, and other municipal or governmental assessments.

H. "Development Period" shall mean the period of time during which Developer owns at least one (1) Lot.

I. "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, trampolines, entry gates, if any, planted trees and shrubs, poles, and signs.

J. "Interest" shall mean the prime rate of a financial institution with an office in Indianapolis, Indiana designated by the Board plus 4% per annum.

K. "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lake(s) and common area portion of the shoreline area as shown on the Plats which serves or shall serve as part of the storm and surface water drainage system serving the Development, as such are or in the future shall be more particularly described on the Plats.

L. "Landscape Easement" shall mean a portion of a Lot designated on the Plats as an area to be landscaped and maintained by the Association as a Common Area.

M. "Lot" or "Lots" shall mean any parcel(s) of real estate, whether residential or otherwise, described by the Plats.

N. "Member" shall mean any person or entity holding membership in the Association as provided in this Declaration.

O. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

P. "Plat" shall mean the recorded or unrecorded Plat for all or any portion of the property as may be amended from time to time.

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

R. "Quorum" shall be defined in Article III, Section 2 of the Bylaws of the Association and may be amended by the Association from time to time. At the time of the execution of this Declaration, the term quorum is defined in the Bylaws as follows: The presence of Members or of proxies entitled to cast thirty percent (30%) of the total number of votes entitled to be cast (Class A and Class B votes combined). If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half of the required quorum for the preceding meeting.

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

T. "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.

2. Organization and Duties of Association.

A. Organization of Association. The Association is or shall be incorporated under the name of Beacon Pointe Homeowners' Association, as a nonprofit corporation organized under the laws of the State of Indiana.

i. 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.

ii. 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.

iii. 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, platted or unplatted, 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 or unrecorded plat of the Development. The Class B membership shall cease and terminate upon the first to occur of (1) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (2) seventy-five percent (75%) of the Lots are deeded to Owners other than Declarant; (3) 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.

iv. 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.

v. 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 not less than three (3) nor more than five (5) persons designated by Declarant, as long as it shall own one or more lots. From and after the Applicable Date, the Board shall consist of five (5) persons elected by the Members. An Owner that is delinquent in the payment of any Annual or Special Assessment shall not be entitled to serve as a member of the Board of Directors.

vi. 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.

vii. 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.

B. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions

contained in the Restrictions. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with Section 11 of this Declaration.

D. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association shall maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

E. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is

practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Prorata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

F. Mortgagee's Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefore from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

3. Architectural Review Committee.

A. Members of ARC. The ARC shall be comprised of not less than three (3) nor more than five (5) 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/or 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 Development. Board members may also serve as ARC members.

B. 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 Improvements, including landscaping, in the Development 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.

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 Development 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 or entity 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 Development by Declarant or such person or entity, 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 Development 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 therefore 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 3B 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. Applicant shall be required to send requests, information or materials to the ARC in compliance with Section 14 herein. Provided, however, regardless of how approval is obtained, the applicant shall be obligated to conform and abide by the architectural rules, standards, covenants and restrictions contained in this Declaration, and as amended and adopted by the ARC, from time to time.

C. 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 3 H. In the absence of such designation, the vote or written consent of a majority of the ARC shall constitute an act of the ARC.

D. 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.

E. 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.

F. 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 Section 3 ("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").

14

(i) 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 Section 3; (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.

(ii) 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.

G. 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 Development 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 Section 3, 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 Development and no Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

H. Variations. The ARC may recommend and the Board may authorize variations 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 variations 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.

I. 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.

4. Remedies.

A. In General. Any party to whose benefit the Restrictions inure, including Developer, any Owner, the Association, or any applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but Developer or the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of the Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of the Restrictions.

5. Covenants for Maintenance Assessments.

A. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer) hereby covenants and agrees to pay to the Association:

- i. A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

ii. A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

The Developer may, but is not obligated, to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.A and the aggregate amount of the annual Assessments collected by the Association.

B. Liability for Assessment. Each Assessment, together with any Interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. Each such Assessment, together with any Interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

C. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Section 5 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development ("Pro-rata Share"), except, as provided in Section 3F herein.

D. Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

E. Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

F. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. At the election of the Developer, the annual Assessments of each Lot in each section of the Development shall commence on the date upon which the Developer first conveys ownership of any Lot in such section to an Owner. The amount of the first annual Assessment due and payable for each Owner shall be prorated

to the end of the assessment year from the date of the closing of the Owner's Lot and shall be paid at the time of the closing of the Owner's Lot. The first annual Assessment within each section of the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

G. Start-Up Fund.

Upon the closing of the initial conveyance of each Lot to an Owner other than the Developer, the Purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Assessment against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed to the Association with respect to such Lot.

The start-up fund shall be used by the Association for the payment of, or reimbursement to, Developer for advances to the Association and initial and set-up expenses of the Association.

H. Duties of the Association.

i. The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

ii. The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive

evidence of payment of any Assessment therein stated to have been paid. The Association shall have the right, in its sole discretion, to charge a fee for the issuance of the certificate.

iii. The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

I. Non-payment of Assessments, Remedies of Association.

i. If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any Interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph ii hereof, provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

ii. If any Assessment upon any Lot is not paid within thirty (30) days after the due date, the Owner shall pay a late charge 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 fifteen (15) day period. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

J. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, the Board, at its discretion, shall either retain the excess amount as a reserve for future expenditures or shall credit a Pro-Rata Share of such excess against the Assessment(s) due from each Owner for the next fiscal year(s).

6. Effect of Becoming an Owner. The Owners of any Lot subject to these Restrictions,

by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer with respect to these Restrictions and also for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant and agree and consent to and with Developer and to and with the Owners and subsequent owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

7. Control of the Common Areas.

A. Control by the Board. The Board shall regulate the Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Common Areas.

B. Conditions. No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

8. The Lakes. Declarant shall convey title to the Lakes to the Association. The Association shall be responsible for maintaining the Lakes. Maintenance costs of the Lakes shall be assessed as a general assessment against the Lots. Each Owner of a Lot that abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the Lake level as constitutes a part of, or abuts, its Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

No boats shall be permitted on any part of a Lake and no dock, pier, wall or other structure may be extended into the Lake without the prior written consent of the Architectural Review Committee and such governmental authority as may have jurisdiction there over. No swimming will be permitted in any Lake except and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Association and each other Owner against any loss or damage incurred as a result of injury to any person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any person who gains access thereto from, over, or across such Owner's Lot. Declarant shall have no liability to any person with respect to a Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including damage from erosion.

9. Restrictions, Covenants and Regulations

A. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots and the Common Areas, and shall be in addition to any other covenants or restrictions contained herein or in the Plats. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or the Association.

Present or future Owners of the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

i. Use of Common Areas. No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Common Areas. All such persons shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas. No person shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes, Landscape Easements, or the Common Areas, except with express permission from the Board. The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clean and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and abeyance and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Properties, except by Developer and/or the Association, which extend into, or to within twenty-five (25) feet from the shoreline of the Lakes.

ii. Nuisance. No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Common Areas.

iii. Setback Lines. Building setback lines shall be established on the Plat. The minimum setback lines shall be as follows:

a. The setback from street right of ways shall be as shown on the Plat.

b. A minimum rear yard of twenty (20) feet will be provided for each Lot within the Development.

c. The minimum side yard setback within the Development will be no less than ten (10) feet and an aggregate of twenty (20) feet.

iv. Utility Easements and Drainage. "Utility Easements" as shown on the Plat shall be reserved for the use of public utilities for the installation of water, sewer, gas, tile and/or electric lines, poles, ducts, pipes, etc., on, over, under, and to said easement for local public use. These easements are not for the use of, and shall not be used for, high voltage electric transmission lines or high pressure liquid transmission pipe lines, except by written permission of the Association. "Drainage Easements" shall be reserved as drainage swales, and said swales are to be maintained by the Owner of any Lot affected. All easements shown as "Utility Easements" are also to be considered drainage easements and are subject to all restrictions of drainage easements. No permanent or other structures are to be erected or maintained upon any easements shown upon the Plat and Owners of Lots shall take their titles subject to the rights of the above-described easements.

v. Land Use and Building Type. No Lot shall be used except for residential purposes, nor shall any Lot be subdivided. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. All dwellings shall have and maintain house number identifications and mail boxes which are uniform throughout the Development.

vi. Building Location. No building shall be located on any Lot nearer to the front line, nor nearer to the side street lines than the minimum set back lines referenced herein. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of the building, provided that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

vii. Pools. No above-ground pools shall be permitted in the Development. In-ground swimming pools, hot tubs, spas or associated structures shall not be erected or placed on any Lot until the construction plans, including a plot plan, have been approved by the Committee.

viii. Temporary and Outbuilding Structures. No structures of a temporary character, trailer, basement, tent, or garage, shall be used on any Lot as a residence, or for any other purpose, either temporarily or permanently. No outbuildings of any type, including mini-barns, sheds or barns, shall be located anywhere on a Lot. For the purpose of this covenant, structures needed and used by the Developer shall be allowed to remain during the Development Period and for a reasonable time thereafter.

ix. Livestock and Poultry. No animals, livestock, or poultry of any kind

shall be raised, bred or kept on any Lot except family pets, which may be kept, provided they are not kept, bred or maintained for commercial purposes and do not to create or constitute a nuisance, as determined in the sole discretion of the Board.

x. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, garbage or other waste, and same shall not be kept except in sanitary containers.

xi. Fences. Ornamental fences or continuous shrub plantings which would in any way serve the purpose of a fence shall not be erected until approved by the Committee.

xii. Signs. No sign of any kind shall be displayed to the public view on any Lot, except one sign of not more than five square feet, advertising the property for sale or for rent, or signs used by the Developer to advertise, market, sell, or otherwise in connection with the Development, the Lots or other related purposed during the Development Period.

xiii. Satellite Dishes/Antennae. No antennae, satellite dishes, or other signal receiving devices, shall be placed or erected on any Lot; provided, however, one (1) satellite dish with a diameter two (2) feet or less shall be permitted on a Lot if such is not visible from the street.

xiv. Parking and Prohibited Vehicles.

a. Parking. Vehicles shall be parked only in the garages or on the driveways, if any, serving the Lots or in appropriate spaces or designated areas in which parking may be assigned and then subject to such reasonable rules and regulations as the Board may adopt. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. The Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

No Owners or other occupants of any Lot shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

b. Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, buses, school buses, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked

only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Development except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Development during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed.

xv. Sight Distance. No fence, wall, hedge, tree or shrub planting or other similar item which obstructs sight lines at elevation between 2.5 and 8 feet above the street, shall be permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points 25 feet from the intersection of said street lines (25 feet for minor streets and 50 feet for arterial streets), or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any Lot within 10 feet from the intersection of a street right-of-way line with the edge of a driveway pavement or alley line. No driveway shall be located within 40 feet of the intersection of two street centerlines or within 70 feet for corner Lots.

xvi. Pipeline Easement. There shall be no improvements whatsoever, including but not limited to fences, minibarns, gazebos, trees or shrubs, constructed or planted within the Parhandle Pipeline Easement set forth on the Plat.

B. 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, 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 Development 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.

C. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in subsection A of this Section 9 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lakes and Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Lakes Landscape Area and Common Areas.

10. Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period commencing on the date this Declaration is recorded and expiring December 31, 2023, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Changes or amendments in these covenants, conditions and restrictions may be made by Owners in accordance with paragraph 11 hereof.

11. Amendment of Declaration.

A. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

i. Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

ii. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

iii. Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

iv. Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided, however, that during the Development Period, any amendment to this Declaration shall require the prior written approval of Developer. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

v. Special Amendments. No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

vi. Recording. Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Hendricks County, Indiana, and such amendment shall not become effective until so recorded.

B. Amendments by Developer Alone. Notwithstanding the foregoing or anything elsewhere contained herein, the Developer shall have and hereby reserves the right and power acting alone, and without the consent or approval of any other of the Owners, the Association, the Board of Directors, any mortgagees or any other person, except as provided below, to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any

25

other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to annex additional real estate to the Development, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto or, (g) to provide for, and coordinate construction and maintenance and to enter into utility or ingress and egress easements with the adjacent Beacon Pointe. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Developer to vote in favor of, make, or consent to any amendments described in this subsection B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this subsection B shall terminate upon the completion of the Development Period.

C. Protection of Declarant. Until the expiration of the Development Period, the prior written approval of Declarant, as developer of the Development, will be required before any amendment which would impair or diminish the rights of Declarant to complete the Development 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.

12. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

13. 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 partnership, or to the 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 or other delivery pursuant to Section 3 herein to

be given to the Association shall be in writing and shall be delivered in person or by overnight express carrier or by United States registered or certified mail with return receipt requested or by telecopy with confirmation of receipt.

14. **Withdrawal, Addition of Property.** Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, until the Applicable Date to withdraw and remove any portion of the Property from or to add and subject any additional property to the control and provisions of this Declaration. Such removal or addition by Developer shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which may be filed in the public records of Hendricks County, Indiana, together with a legal description of the Property being withdrawn or the property being added.

15. **Costs and Attorney Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, of the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorney fees incurred in connection with such default or failure.

16. **Rules and Regulations.** The Board shall have the right to promulgate and establish rules and regulations relating to the requirements for maintenance of the Common Area and the Lots and any other part of the Property.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants, Conditions and Restrictions for Beacon Pointe to be executed as of the date written above.

BEACON POINTE, LLC, an Indiana limited liability company

By:

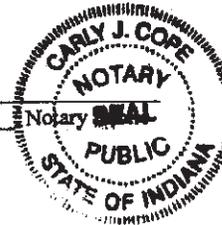
Greg M. Small
Greg M. Small, Manager

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

On this 9TH day of FEBRUARY, 2005, personally appeared before me, a notary public, Greg M. Small, Manager, Beacon Pointe, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Beacon Pointe on behalf of such company.

Witness my hand and Notarial Seal this 9TH day of February, 2005.

Carly J. Cope
Carly J. Cope



My Commission Expires:
9SETT-12

County of Residence:
MARION

ARBOR HOMES, LLC,
an Indiana limited liability company

By: [Signature]

STATE OF INDIANA)
) SS:
COUNTY OF Marion)



On this 10th day of February, 2005, personally appeared before me, a notary public, Curtis A. Rector, Arbor Homes, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Beacon Pointe on behalf of such company.

Witness my hand and Notarial Seal this 10th day of February, 2005.

Kathy A. Dalton
Kathy A. Dalton, Notary Public

My Commission Expires:
03-16-07

County of Residence:
Marion

This Instrument was prepared by: Stephen A. Backer, Attorney, Backer & Backer, P.C., 8710 North Meridian Street, Indianapolis, IN 46260

29

EXHIBIT "A"

Beacon Pointe, Section 1, as per plat thereof recorded February 2, 2005 as Instrument No. 200500002831 in the office of the Recorder of Hendricks County, Indiana.