

Instrument  
9809853440

59.00  
(26)  
2.00 none

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CUMBERLAND WOODS**

**THIS DECLARATION**, made on the 20<sup>th</sup> day of JULY, 1998, by **CROSSMANN COMMUNITIES PARTNERSHIP**, an Indiana general partnership, ("Declarant"),

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision known as Cumberland Woods.

**NOW, THEREFORE**, Declarant hereby declares that all the Property shall be held, sold and conveyed, subject to the following easements, restrictions, limitations, covenants and conditions, which are for the purpose of protecting the value and desirability of, 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**

*Name*

9809853440  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 09-23-1998 At 03:40 pm.  
DEC COV RES 59.00

The subdivision of the Property created by this Declaration shall be known and designated as **CUMBERLAND WOODS**, a subdivision located in Hamilton County, Indiana.

**ARTICLE II**

*Definitions*

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the **CUMBERLAND WOODS HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 2.5 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", "C.A.", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Declarant" means the *CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership* and its successors and assigns.

Section 2.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

Section 2.9 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.10 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.11 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.12 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.13 "Plat" means the subdivision plats of the Property, which are recorded with the Recorder of Hamilton County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Declaration.

### ARTICLE III

#### *Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association; and

(h) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

**Section 3.2 Delegation of Use.** In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

**Section 3.3 Certain Obligations and Access Rights to the Common Area.**

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

**Section 3.4 General Drainage, Utility, Sewer and Other Development Easement** - The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for

drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

**Section 3.5 Easement for Emergency Purposes.** An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

**Section 3.6 Fee Title to Lot.** The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in Hamilton Green.

**Section 3.7 Designated Drainage, Utility, and Sewer Easements.** There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private

utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for (i) mounding easements, (ii) landscape or landscape maintenance easements, and/or (iii) sign easements, are hereby reserved for such (i) mounding easements, (ii) landscape easements and/or landscape maintenance easements and/or (iii) sign easements. Declarant hereby reserves unto itself during the Development Period, and, thereafter, unto the Association, any such easements for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.11 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.12 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

## ARTICLE IV

### *Association Membership, Voting Rights Board of Directors and Professional Management*

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or, (b) December 31, 2007.

Section 4.3 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

## ARTICLE V

### *Covenant for Maintenance Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and

(b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

### Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be \$120.00 per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than 10% above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than 10% above the maximum Regular Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

with the approval of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

**Section 5.7 Date of Commencement of Yearly Assessments; Due Dates.** The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

**Section 5.8 Effect of Nonpayment of Assessments; Remedies of the Association.** If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

**Section 5.9 Subordination of the Lien to Mortgages; Sale or Transfer.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

## ARTICLE VI

### *Use, Restrictions, and Architectural Control*

**Section 6.1 Lot Use and Conveyance.** All Lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

**Section 6.2 Architectural Control.** No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. However, there shall be no such approval of the planting of hedges, walls, fences, structures and/or other improvements prohibited under Section 3.8 above, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

**Section 6.3 Leasing.** Any Lot may be leased by its Owner.

**Section 6.4 Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Property, on any Lot, or in any Dwelling Unit, except that no more than a total of two (2) dogs, cats, or other normal household pets may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose.

**Section 6.5 Outside Storage.** All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish,

trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

**Section 6.6 Setback Lines.** Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Association Board of Directors or Architectural Review Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

**Section 6.7 Side Setbacks.** The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

**Section 6.8 Temporary Structures and Outbuildings.** No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

**Section 6.9 Motor Vehicle Repair.** The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

**Section 6.10 Nuisances.** No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

**Section 6.11 Permitted Uses.** No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

**Section 6.12 Drains.** No house footing drain or roof water drain shall be discharged into the sanitary sewers.

**Section 6.13 Number of Dwelling Units.** The number of Dwelling Units shall not exceed the number of Lots within the Property.

**Section 6.14 Residential Use.** Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one half (2-1/2) stories or thirty-five (35) feet in height.

Section 6.15 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.16 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.17 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.18 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.19 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.20 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference

throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

**Section 6.21 Rules and Regulations.** The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

**Section 6.22 Development and Sale Period.** Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

**Section 6.23 Outside Use of Lots.** Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors. Above ground swimming pools are prohibited on the Property.

**Section 6.24 Mailboxes.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association.

**Section 6.25. Yard Lights.** The builder on each Lot shall supply and install a yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association. Each such light fixture shall also have a bulb of sufficient wattage to insure uniform illumination on each Lot and shall be equipped with a photo-electric cell or similar device to

insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Owner of each Lot.

Section 6.24 Notice of Zoning Commitments. Notice is hereby given that certain written commitments were made in connection with a variance granted with respect to the Property, which commitments were recorded with the Recorder of Hamilton County, Indiana, (i) on June 3, 1997 as Instrument No. 9709721638 and (ii) on March 9, 1998, as Instrument No. 9809811253.

## ARTICLE VII

### *Maintenance, Repairs and Replacements*

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

### Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of the entry signs, permanent subdivision identification sign, and landscaping installed by the Declarant in any Common Area, Landscape Easement, or Landscape Maintenance Easement;

(iii) Maintenance of the landscaping, berms, mounds and irrigation systems located on (i) the parcel of real estate which is east of Crossroads Lane and which is graphically depicted on what is attached hereto and incorporated herein by reference as Exhibit "B" and legally described as containing .49 acres, more or less, on what is attached hereto and incorporated herein by reference as Exhibit "C" (hereafter "Entrance Wall Area") and (ii) the common area adjacent to 121<sup>st</sup> Street (hereafter "the 121<sup>st</sup> Street Buffer"). The Association shall also maintain the irrigation system installed by Declarant and by which the Entrance Wall area and the 121<sup>st</sup> Street Buffer are irrigated. Such irrigation shall be sufficient to properly hydrate the landscaping on the Entrance Wall Area and the 121<sup>st</sup> Street Buffer. The

Association shall obtain the prior written approval of Pedcor Investments - 1997 -XXX,L.P. before changing, replacing, adding, deleting, or modifying any of the mounds, berms, landscaping, or irrigation system originally installed by Declarant in the Entrance Wall Area and the 121<sup>st</sup> Street Buffer, and shall otherwise comply with the ongoing obligations of Declarant as set forth in the Easement Common Drive and Maintenance Agreement dated March 6, 1998 and recorded as Instrument Number 9809827014 in the Hamilton County Recorder's office.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

## ARTICLE VIII

### *Insurance*

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Associations, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

**Section 8.2 Fidelity Bonds.** The Association shall have blanket fidelity bonds for 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 Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

**Section 8.3 Miscellaneous Insurance Provisions.** The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

**Section 8.4 Casualty and Restoration.** Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

**Section 8.5 Insufficiency of Insurance Proceeds.** If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

**Section 8.6 Surplus of Insurance Proceeds.** In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

## ARTICLE IX

### *Mortgages*

**Section 9.1 Mortgagee Rights.** In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

**Section 9.2 Notice to Mortgagees.** The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge maybe made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

**Section 9.3 Condemnation and Insurance Awards.** No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

**Section 9.4 Right of First Refusal.** The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

(a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;

(b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor;  
or

(c) Sell or lease a unit acquired by the mortgagee.

**Section 9.5 Unpaid Dues or Charges.** Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

## ARTICLE X

### *General Provisions*

**Section 10.1 Right of Enforcement.** In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

**Section 10.2 Severability and Waiver.** Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

**Section 10.3 Amendment.** During the first-twenty (20) years following its recordation, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other charges that may be levied per the terms hereof;

(c) By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of the Common Area owned by the Association, party walks, common fences and driveways, and the upkeep of lawns and plantings in the Property;

(d) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement costs);

(e) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

(f) Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided for in this Declaration;

(g) Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;

(h) Change the rights to the use of the Common Area owned by the Association, except as provided for in this Declaration;

(i) Any change concerning convertibility of Dwelling Units into Common Area owned by the Association or vice versa, except as provided for in this Declaration;

(j) Any change in requirements for insurance or fidelity bonds set forth in this Declaration,;

(k) Any change in the manner in which units may be leased except as set forth in this Declaration;

(l) Any imposition of any restriction on a Dwelling Unit Owner's right to sell or transfer his or her Dwelling Unit;

(m) Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in the Declaration;

(n) Any action to terminate the legal status of the development after substantial destruction or condemnation occurs;

(o) Any provision that expressly benefits mortgage holders, insurers or guarantors; or

(p) Any termination of legal status of the development for reasons other than substantial destruction or condemnation of the Property.

The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of such ten-year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4 HUD Amendment Approval. All other provisions of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

(a) Annexation of additional properties other than the Additional Real Estate;

(b) Dedication of Common Area; and

(c) Amendment of the Declaration of Covenants, Conditions and Restrictions.

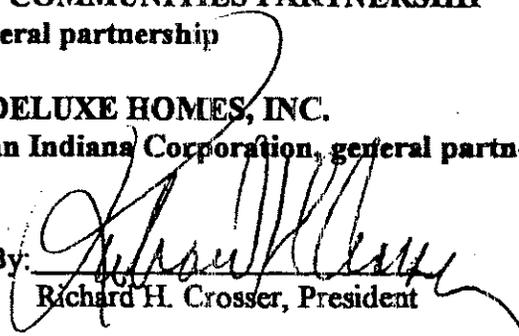
Section 10.5 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 10.6 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

***IN WITNESS WHEREOF, CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership, has caused this Declaration to be executed as of the date first written above.***

**CROSSMANN COMMUNITIES PARTNERSHIP  
an Indiana general partnership**

**By: DELUXE HOMES, INC.  
an Indiana Corporation, general partner**

By:   
Richard H. Crosser, President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Richard H. Crosser, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Cumberland Woods as President of Deluxe Homes, Inc., an Indiana Corporation, a general partner of Crossmann Communities Partnership, an Indiana general partnership.

Witness my hand and Notarial Seal this 20th day of July, 1998.

My Commission Expires:  
May 21, 2001



  
Notary Public

Residing in Hendricks County

Shinley J. White  
Printed Name

Prepared By: Charles D. Frankenberger  
NELSON & FRANKENBERGER  
3021 East 98th Street  
Suite 220  
Indianapolis, Indiana 46280  
(317) 844-0106

Part of the Northeast Quarter and the Northwest Quarter of Section 32, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

BEGINNING at the southeast corner of said Northwest quarter; thence South 90°00'00" West along the south line of said Northwest Quarter a distance of 206.71 feet; thence North 04°49'06" West a distance of 720.19 feet to the beginning of a non-tangent curve concave southeasterly having a radius of 535.00 feet and a central angle of 56°28'29"; thence Northeasterly along the arc of said curve a distance of 527.33 feet (said arc being subtended by a chord having a bearing of North 62°17'05" East and a length of 506.24 feet); thence South 89°28'40" East tangent to last described curve a distance of 202.19 feet; thence South 00°31'20" West a distance of 110.00 feet; thence South 89°28'40" East a distance of 299.94 feet; thence North 00°31'01" East a distance of 529.52 feet to the Southerly Limited Access Right-of-Way line of I-69 per Indiana State Highway Commission Plans, Project No. 8-69-1(33), dated September 1966, (the following five (5) courses are along said southerly right-of-way line); (1) thence North 82°33'45" East a distance of 58.38 feet; (2) thence North 85°25'29" East a distance of 100.12 feet; (3) thence North 82°33'45" East a distance of 300.00 feet; (4) thence North 79°42'00" East a distance of 100.12 feet; (5) thence North 82°33'45" East a distance of 405.88 feet; thence South 00°30'56" West parallel with the east line of said Northeast Quarter a distance of 161.60 feet to a point in the south line of the Northeast Quarter of said Northeast Quarter; thence South 89°58'57" East along the south line of the Northeast Quarter of said Northeast Quarter a distance of 1014.01 feet to the southeast corner of the Northeast Quarter of said Northeast Quarter; thence South 00°30'56" West along the east line of said Northeast Quarter a distance of 207.61 feet; thence North 89°59'32" West a distance of 1045.12 feet to the approximate centerline of Sand Creek (the following nine (9) courses are along said centerline); (1) South 24°53'26" West a distance of 135.81 feet; (2) thence South 12°10'48" West a distance of 157.30 feet; (3) thence South 21°36'53" West a distance of 396.35 feet; (4) thence South 20°42'33" West a distance of 124.53 feet; (5) thence South 02°28'25" East a distance of 65.97 feet; (6) thence South 37°14'08" West a distance of 34.38 feet; (7) thence South 07°13'19" West a distance of 72.38 feet; (8) thence South 05°12'29" East a distance of 49.28 feet; (9) thence South 00°21'32" East a distance of 147.58 feet to the south line of said Northeast Quarter; thence North 89°59'32" West along the south line of said Northeast Quarter a distance of 1306.53 feet to the Point of Beginning. Containing 49.302 acres (2,147,602 sq. ft.), more or less.



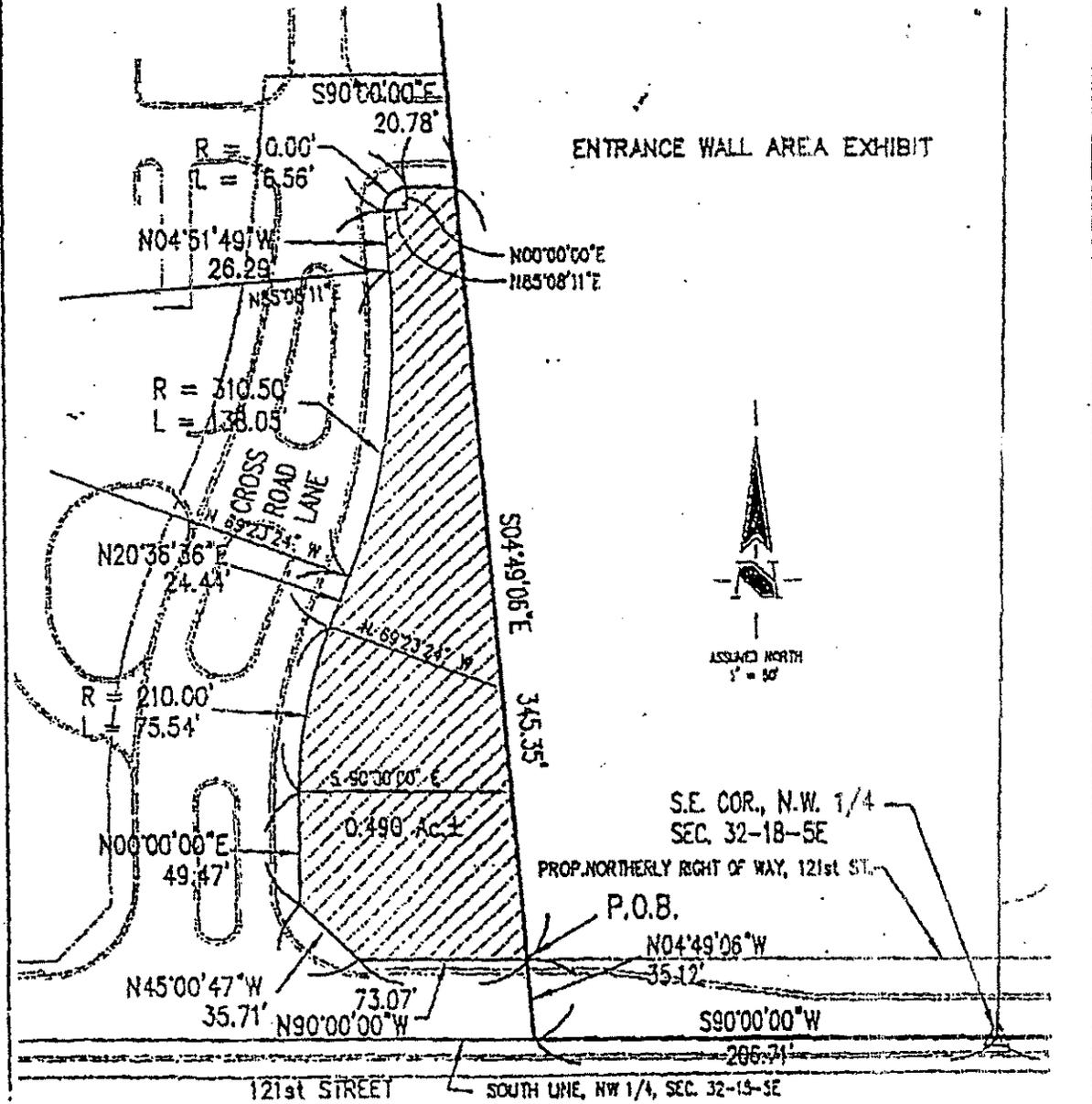
# BEST POSSIBLE IMAGE ALL PAGES



**THE  
SCHNEIDER  
CORPORATION**

12726 Hamilton Crossing Blvd.  
Carmel, Indiana  
48032  
317-674-8797  
317-574-3799 (Fax)

Engineering  
Surveying  
Landscape Architecture  
GIS: LIS  
Geology



DWG: E:\1167\001\DWG\EXHIBIT11.DWG

JOB # 1167.004  
DATE: 02/16/98 SH. 2 OF 2

**EXHIBIT**  
"B"



THE  
SCHNEIDER  
CORPORATION

12726 Hamilton Crossing Blvd.  
Carmel, Indiana  
46032  
317-574-3797  
317-574-3799 (Fax)

Engineering  
Surveying  
Landscape Architecture  
GIS • LIS  
Geology

### ENTRANCE WALL AREA EXHIBIT

#### LAND DESCRIPTION

Part of the Northwest Quarter of Section 32, Township 18 North, Range 5 East of the Second Principal Meridian in Hamilton County, Indiana, described as follows:

Commencing at the Southeast corner of the Northwest Quarter of said Section; thence South 90 degrees 00 minutes 00 seconds West (assumed bearing) along the South line thereof a distance of 206.71 feet; thence North 04 degrees 49 minutes 06 seconds West a distance of 35.12 feet to a point on the proposed Northerly right of way of 121st Street, also being the POINT OF BEGINNING; thence North 90 degrees 00 minutes 00 seconds West along said right of way a distance of 73.07 feet; thence North 45 degrees 00 minutes 47 seconds West a distance of 35.71 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 49.47 feet to a point of curvature on a curve having a radius of 210.00 feet, the radius point of which bears South 90 degrees 00 minutes 00 seconds East; thence northerly along said curve an arc distance of 75.34 feet to a point which bears North 69 degrees 23 minutes 24 seconds West from said radius point; thence North 20 degrees 36 minutes 36 seconds East a distance of 24.44 feet to a point of curvature on a curve having a radius of 310.50 feet, the radius point of which bears North 69 degrees 23 minutes 24 seconds West; thence northerly along said curve an arc distance of 138.05 feet to a point which bears North 85 degrees 08 minutes 11 seconds East from said radius point; thence North 04 degrees 51 minutes 49 seconds West a distance of 25.29 feet to a point of curvature on a curve having a radius of 10.00 feet, the radius point of which bears North 85 degrees 08 minutes 11 seconds East; thence northerly along said curve an arc distance of 16.56 feet to a point which bears North 00 degrees 00 minutes 00 seconds East from said radius point; thence South 90 degrees 00 minutes 00 seconds East a distance of 20.78 feet; thence South 04 degrees 49 minutes 06 seconds East a distance 343.35 feet to the POINT OF BEGINNING, containing 0.450 acres more or less.

#### NOTE:

This land description was prepared based exclusively upon record deed information and/or prior surveys of the subject premises or its parent. For purposes of the preparation of this description, no survey of the described real estate was performed and no monuments were set.

DWG: J:\1127\001\CWCS\EXHIB011.DWG

JOB # 1167.004

DATE: 02/16/98

SHT. 1 OF 2



**BY-LAWS OF**  
**CUMBERLAND WOODS**  
**HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

GENERAL

Section 1. The name of the corporation is CUMBERLAND WOODS HOMEOWNERS ASSOCIATION, INC. (hereinafter referred to as the "Association").

Section 2. The principal office of the Association shall be located at 9202 North Meridian Street, Suite 300, Indianapolis, Indiana 46260, until and unless changed in accordance with law by the Board of Directors.

Section 3. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE II**

DEFINITIONS

Section 1. "Declarant" shall mean Crossmann Communities Partnership, an Indiana general partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Declaration, including, without limitation, any mortgagee acquiring title to any portion of the Property (as such term is defined in the Declaration) pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

Section 2. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of Cumberland Woods which was recorded in the Office of the Recorder of Hamilton County.

Section 3. "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Declaration and the "Corporation" in the Articles of Incorporation of this the Association.

Section 4. "Applicable Date" shall mean and refer to the date the Class B membership terminates as specified in Section 5.03(b) of the Articles of Incorporation of this Association.

Section 5. All of the terms as defined and used in the Declaration shall have the same meanings in these By-Laws and reference is specifically made to Article II of the Declaration containing definitions of terms.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership, Transfer, Voting Rights. Reference is hereby made to Article IV of the Declaration and Article V of the Articles of Incorporation which sets forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of Members, all of which terms, provisions and conditions are incorporated herein by reference.

Section 2. Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the Members of the Association. Cumulative voting shall not be permitted.

Section 4. Majority Required. A majority of the votes of Members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the By-Laws or by statute.

Section 5. Meetings. Meetings of the Members of the Association shall be in accordance with the following provisions:

A. Place. Meetings of the Members shall be held at such place in Hamilton County, Indiana, as may be designated by the Board of Directors of the Association.

B. Annual Meetings. The first annual meeting of the Members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided

by the Board of Directors. At such first annual meeting of the Members, the Members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the Members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the Members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

C. Special Meetings. Special meetings of the Members shall be called by the President of the Association, by resolution of the Board of Directors of the Association or upon a written petition signed by Members of the Association who are entitled to vote sixty percent (60%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

D. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Order of Business. The order of business at all meetings of the members shall, to the extent applicable, be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

F. Voting by Co-Owners and Entities. The vote appurtenant to any Lot in which more than one person owns an interest may be exercised by any of such persons present at any meeting, unless the Association is advised (by objection or protest at the meeting or written notice prior thereto) by any other person owning an interest in such Lot that the Owners of the Lot are unable to agree upon the manner in which the vote appurtenant to such Lot shall be cast at such meeting or on any particular question to come before such meeting. In such event,

the vote appurtenant to the Lot shall not be counted at the meeting or on the particular question noted, as the case may be. In the event any Lot is owned by a corporation, then the vote appurtenant to such Lot shall be cast by a person designated in a certified signed by the president or any vice president of such corporation and attested by the secretary or an assistant secretary of such corporation and filed with the Secretary of the Association prior to the meeting. The vote appurtenant to any Lot owned by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and unless any objection or protest by any other such trustee or partner is noted at such meeting or in writing prior thereto, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

G. Suspension of Voting Rights. No Class A Member shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

## ARTICLE IV

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. The Initial Board of Directors, named in Section 6.02 of the Articles of Incorporation of this Association, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. After the Applicable Date, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members of the Association. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the Members and shall serve until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Members of the Association, or persons deemed to be Members eligible to serve as directors thereof or otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Election. After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the Members of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled

to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE V

### BOARD OF DIRECTORS

Section 1. Number and Qualification. Until the Applicable Date, the affairs of the Association shall be governed by the Initial Board of Directors and shall consist of not fewer than three (3) members nor more than five (5) members. After the Applicable Date, the affairs of the Association shall be governed by a Board of Directors composed of five (5) persons.

Section 2. Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors by more than one person at a time.

Section 3. Initial Board of Directors. The initial Board of Directors named in the Articles of Incorporation (the "Initial Board") shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date.

Section 4. Term of Office Generally. Such Directors shall hold office until the next annual meeting of shareholders, or until their successors are elected, or until they are removed or resign.

Section 5. Duties. The Board of Directors shall have the following duties:

- A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding twenty-five percent (25%) of the total votes of the membership entitled to vote;
- B. To supervise all officers, agents and employees of the Association;
- C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- D. To fix the amount of any special assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;

E. To send written notice of each assessment to each Owner in accordance with the Declaration;

F. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;

G. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;

H. To procure and maintain the insurance coverages required by the Declaration and such other insurance coverages as the Board of Directors, in its sole discretion, deems necessary or advisable;

I. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, and at least as required by the Declaration; and,

J. To cause all of the Common Areas and all easements hereunder, but not limited to Lake Easements, Landscape Easements, Drainage Easements, and Utility Easements to be maintained to the extent to the Association's responsibilities therefor as provided in the Declaration.

Section 6. Vacancies. Until the Applicable Date any vacancy in the Board of Directors shall be filled by the Declarant. Thereafter, any vacancy in the Board of Directors shall be filled by vote of the majority of remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association as such director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties, and any Director may be paid and compensated for services to the Association in a capacity other than as a director.

Section 8. Removal of Directors. After the Applicable Date, any Director may be removed with or without cause by a majority vote of the members of the Association. Prior to the Applicable Date, any Director may be removed, with or without cause by the Declarant.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Wavier of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles of Incorporation, these By-Laws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE VI

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

A. President. The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of the State of Indiana.

B. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the President.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep

proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE VII

### COMMITTEES

The Board of Directors shall appoint the committees provided for in the Declaration and the Nominating Committee referred to in Article IV of these By-Laws. In addition, the Board of Directors or the President may appoint various other committees to carry out the purposes of the Association. Except as otherwise expressly provided in Article IV of these By-Laws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

## ARTICLE VIII

### BOOKS OF ACCOUNT AND FISCAL YEAR

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas and all easements including, but not limited to the Lake Easement, Landscape Easement, Drainage Easement and Utility Easement Areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements, and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Lot, including any Owner, any lender and any holds, insurer or guarantor of the first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances and shall be audited annually by qualified auditors. The cost of such audits shall be a Common Expense. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive an audited financial statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, and the By-Laws of the Association, and other rules concerning the Property, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Association shall commence January 1, and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

## ARTICLE IX

### CONTRACTS, LOANS & CHECKS

Section 1. Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

## ARTICLE X

### MISCELLANEOUS

Section 1. These By-Laws may be amended, at a regular or special meeting of the Members of the Association, by a vote of a majority of a quorum of members present in person or by proxy. In addition, the Board of Directors of the Association shall have the right and power, without the consent of the Members, to make, alter, amend or repeal these By-Laws; provided, however, that so long as there is a Class B membership still in existence, HUD/VA has the right to veto any such amendments.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.